

# SEVERALL PAPERS

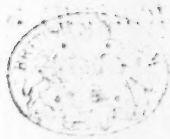
Lately VVritten and Published by  
JUDGE IENKINS, Prisoner  
in the Tower : viz.

1. *His Vindication.*
2. *The Armies indemnity : with a Declaration, shewing, how every Subject ought to be tryed for Treasons, Felonies, and all other Capitall Crimes.*
3. *Lex Terræ.*
4. *A Cordiall for the good people of London.*
5. *A Discourse touching the inconveniences of a long continued Parliament.*
6. *An Apologie for the Army.*



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ANNO 1647.





# The Vindication of Iudge *Jenkins*, Prisoner in the Tower, the 29. of Apr.

1647.

**I** Was convened upon Saturday the 10. of this moneth of Aprill before a Committee of the House of Commons, where in Master *Corbet* had the Chaire; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other answer then that which was set down in a paper I then delivered to the said M. *Corbet*, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging, nor obeying the power of the Two Houses, by adhering to the King in this War. I deny this to be Treason, for the supreme and onely power, by the Lawes of this Land, is in the King. If I should submit to any examination derived from your Power, which by the Negative Oath stands in opposition to the Kings Power, I should confesse the Power to be in you, and so condemne my selfe for a Trajtour, which I neither ought nor will doe.

I am sworne to obey the King, and the Lawes of this Land: you have not power to examine me by those Lawes, by the Kings Writ, Patent, or Commission; if you can produce either thereof, I will answer the questions you shall propound; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the Lawes, which I will not doe to save my life.

You your selves, all of you this Parliament, have sworne that the King is our onely and supreme Governour: your Protestation, your Vow and Covenant, your solemn League and Covenant, your Declarations, all of them publish to the Kingdome, that your scope is the maintenance of the Lawes; those Lawes are

and must be derived to us, and enlivened by the only supream Governour, the Fountaine of justice, and the life of the Law, the King. The Parliaments are called by his writs; the Judges sit by his Pattents, so of all other Officers; the Cities and Towns incorporate, governe by the Kings Charters; and therefore since by the Law I cannot be examin'd by you, without a power derived by His Majesty, I neither can, nor will, nor ought you to examine me upon any question. But if as private Gentlemen, you shall be pleased to aske me any questions, I shall really and truly answer every such question, as you shall demand.

*Aprill 10. 1647.*

*David Jenkins.*

This paper hath been mis-represented to the good people of this Citie by a Printed one, styling it my Recantation, which I owne not; and besides is in it selfe repugnant (just like these times) the Body falls out with the Head. To vindicate my selfe from that Recantation, and to publish to the world the realitie of the Paper then delivered to M. Corbet, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murder, or Felony, hath any assurance at all for so much as one houre of life, Lands or Goods without the Kings gracious pardon, 27. Hen. 8. Cap. 24.

The King is not virtually in the two Houses at *Westminster*, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. The House of Commons hath declared to the Kingdome in their Declarations of the 28. of November last to the *Scots Papers*, pag. 8. *That the King at this time is not in a condition to governe.* No person or thing can derive a vertue to other men, or things, which it selfe hath not: and therefore it is impossible that they should have a vertue from the King to governe, which they declare he hath not himselfe to give.

5. Elizab.  
Cap. 1.

2. The Law of the Land is, *That no person in any Parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes as if he had never beene elected or returned, if before he sit in the House, he take not his Oath upon the holy Evangelists,*

*lists, that the Kings Majestie is the only and supreme Governour over all persons in all Causes.* All the Members of the said House have taken it, and at all times as they are returned doe take it; otherwise they have no colour to intermeddle with the publicke Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, *That the King is in no condition to governe?* By the one it is sworne, He is the only supreme Governour; by the other, that he is not in a condition to governe.

2. The Oath is not, that the K. was, or ought to be, or had been, before he was seduced by ill Councell, our onely and supreme Governour in all Causes, over all persons; but in the present tense, that he is our onely and supreme Governour, at this present, in all Causes and over all persons. So they the same persons sweare one thing, and declare to the Kingdom the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4. The Ministers in the Pulpits doe not say, what they sweare in the House of Commons. Whoever heard sithence this unnatural Warre, any of their Presbyters attribute that to His Majestie which they sweare? The reason is, their Oath is taken at *Westminster* amongst themselves: That which their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their onely and supreme Governour in all Causes, is contrary to that the Houses doe now practice, and to all they act and maintaine. They, the two Houses forsooth, are the onely and supreme Governours in default of the King, for that he hath left his great Councell and will not come to them, and yet the King desires to come, but they will not suffer him, but keepe him prisoner at *Holmby*: so well doe their Actions and Oathes agree.

5. They sweare now King CHARLES is their onely and supreme Governour; but with a resolution at the time of the Oath taking, and before and after, that he shall not be onely or supreme Governour, or onely and supreme, but not any Governour at all: For there is no point of Government, but for some yeares past they have taken to themselves, and used his name onely, to abuse and deceive the people.

6. That this virtuall power is a meere fiction, their Propositions sent to *Oxford*, to *Newcastle*, to be signed by the King, doe prove it so. What needs this adoe, if they have the virtuall power with them at *Westminster*?

7. To affirme that the Kings power (which is the virtue they talk of) is separable from his Person, is High Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir *Edward Coke*; so much magnified by this present Parliament; who in the 7. part of his Reports, in *Calv. Case*, fo. 111. saith thus: *In the reigne of Edward the second, the Spencers, the Father and Son, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that Homage and Oath of Ligeance was more by reason of the Kings Crowne, (that is, of his politicke capacity) than by reason of the person of the King: upon which opinion they inferred 3. execrable and detestable consequences. 1. If the King doe not demean himselfe by reason in the right of his Crowne, his lieges are bound by Oath to remove the King. 2. seeing that the King could not be reformed by smit of Law, that ought to be done per aspetitee that is by force. 3. That his lieges be bound to governe in aid of him, and in default of him: All which were condemned by two Parliaments, one in the raisne of Edw. 2. called exilium Hugonis le Spencer; and the other in Anno 1. Edw. 3. cap. 2.*

And that the naturall body and politicke makes one indivisible body, and that these two bodies incorporate in one person make one body, and not divers, is resolved as the Law of England. 4. *Eliz. Ploydon Com.* fol. 213. by Sir *Cobert Cutlin*, Lord Chiefe Justice of England, Sir *James Dier*, Lord Chief Justice of the Common Pleas, the Lord *Sanders*, Lord Chiefe Baron of the Exchequer, and by the rest of the Judges, viz. Justice *Rastall*, Justice *Browne*, Justice *Corbet*, Justice *Wesson*, Baron *Frevyll*, *Conne* and *Pewdrick*, Sergeant *Gerrard* Atturney Generall; *Carrell* Atturney of the *Dutch*: *Plowdon* the learnedst man of that age, in the knowledge of the Law, and Customes of the Realm.

8. The Law in all ages without any controversie is and hath bene: That no Act of Parliament bindes the Subjects of this Land without the assent of the King, either for person, Lands, Goods, or Fame. No man can shew any fillable, letter, or line to the contrary in the

the bookes of the Law, or printed Acts of Parliament, in any age in this Land. If the vertuall Power be in the Houses, there needs no assent of the Kings. The stiles of the

Acts printed from 9. Hen. 3. to 1. Hen. 7. were either, *The King ordaines at his Parliament, &c.* or the King ordaineth by the advice of his Prelats and Barons, and at the humble Petition of the Commons, &c. In Hen. 7. his time the Stile altered, and hath sithence continued

thus, It is ordained by the Kings Majesty, and the Lords spirituall and temporall, and Commons in this present Parliament assembled. So that alwayes the Assent of the King giveth the life to all, as the soule to the body; and therefore our Law-Bookes call the King the Fountaine of Justice, and the life of the Law.

9. Mercy as well as Justice belongs by the law of the Land only to the King. This is confessed by Master Prynne, and it is so without any question: The King can only pardon, and never more cause to have sufficient pardons then in such troublesome times as these, and God send us pardons and peace. None can give any pardon, but the King by the Law of the Land: *The whole and sole power of pardoning Treasons and Felonies belongs to the King*, are the words of the Law, and it is a delusion to take it from any other and utterly invalid. 27 Hen. 8. Cap 24.

10. *Queene Elizabeth* summoned her first Parliament, to be held the 23. of January, in the first yeare of Her Majesties Raigne. The Lords and Commons assembled by force of the same writ the 23. day the Queen fell sick and could not appear in her person in Parliament that day, and therefore prorogued it untill the 25. of the same Month of January. Resolved by all the Judges of England, that the Parliament began not the day of the returne of the writ, viz. the 23. of January, when the Lords and Commons appeared, but the 25. of the said month when the Queen came in person: Which sheweth evidently that this virtuall presence is a meere deluding fiction that hath no ground in Law,

9 Hen. 3. *Magna Charta*. So in every age till this day, and in every Kings time, as appears by the Acts in Print. 1 part of the Instit Sect. 234. in fine, where many of the Law-Bookes are cited. 7. H. 7. 14. 12. of Hen. 7. 20.

2. H. 4. c. 22.  
4 pars instit.  
42. M. Prin  
in his Trea.  
tise of the  
great Seale  
Fol. 17.  
27. Hen. 8.  
Chap. 24.

3 Of Eliz.  
Dier. 203.

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Law, reason, or sense. They have the King now a prisoner at *Holmby*, with guards upon him, and yet they governe by the ver-  
tuall Power of their Prisoner. These are some of the causes  
and reasons which moved me to deliver that paper to Master  
*Corbet*, which I am ready to justifie with my life, and should  
hold it a great honour to die for the honourable and holy Lawes  
of the Land.

That which will save this Land from destruction,  
is an Act of Oblivion, and His Majesties gracious generall  
pardon, the Souldiers their Arrears, and every man his owne,  
and Truth and Peace established in the Land, and a favourable re-  
gard to the satisfaction of tender Consciences.

*April 29. 1647.*

*David Jenkins.*

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THE  
ARMIES  
INDEMNITY.

With Addition ; *K with No 1*

*Together,*

With a Declaration, shewing how every Subject of *England* ought to be tried for Treasons, Felonies, and all other Capitall Crimes, as it is set down in the Lawes of the LAND.

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By *David Jenkins*, now Prisoner in the Tower of LONDON.

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Printed in the Yeare, 1647.

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THE  
ARMIES

AND

NAVY



By Order of the Admiralty

London: Printed by J. G. Smith, 1801.





## *The Armies Indemnity, &c.*

**U**Pon the publishing of the Ordinance of the 22. of May last, for the Indemnity of the Army, certain Gentlemen well affected to the peace of the Kingdome, and safety of the Army, desired me to set downe in writing, whether by the Law of the Land, the said Ordinance did secure them from danger, as to the matters therein mentioned. For whose satisfaction in a businesse wherein the lives and fortunes of so many men were concerned, and the Peace of the Kingdome involved, I conceived I was bound in duty and conscience, faithfully and truly to set downe what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Army by the Law of the Land is apparent to all men. It is high Treason by the Law of the Land to leavy warre against the King, to compasse or imagine his death, or the death of his Queene, or of his eldest Sonne, to counterfeit his Money, or his great Seale; They are the words of the Law. Other Treasons then are specified in that Act, are declared to be no Treasons untill the King and his Parliament shall declare otherwise, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason, then there is declared: as appeares by the Lord *Cooke* in the places cited in the Margin: A Law-booke published by order of the House of Commons this Parliament, as appeares in the last leafe of the second part of the Institutes, published likewise by their Order.

The Resolutions of all the Judges of England, upon the said Statute of the 25. *Ed. 3.* (as appeares in the said third part of the Institutes, *Chap. High-Treason*) have been, that to imprison the King untill he agree to certaine demands is High-

25. *Ed. 3. c. 11.*  
*1 R. 2. cap. 3.*  
*1 Hen. 4. c. 10.*  
*1 and 2. Phil.*  
*and Mary. c. 10*

3. *Pars instit.*  
*Pag. 12. & 2.*  
*pars instit. Pag.*  
*47, 48. & 4. pars*  
*instit. P. 23, 48.*  
*29.*

3. *Pars instit.*  
*cap. Treason*  
*Pa. 9, 10, & 12.*  
*Mr S. John the*  
*Solicitor in*  
*his Speech up-*  
*on the arraig-*  
*ment of the*

Earle of *Stratford*, Printed by order of the House of Commons. p. 7. 13.

4. *Parl. Hist.*  
c. *Parl.* p. 25.

11. *M. 7.* cap. 1.

*Stamford* l. 2.  
fol. 99.

18 *Ed. 3.* Statutes at large  
144.

20 *Ed. 3.* c. 1.

11. *Ric. 2.* c. 10.

4 *Parl. Hist.*

*Reg.* 23. 48. 29.

Treason; to seize his Ports, Forts, Magazine for Warre, are High-Treason: to alter the Lawes is High-Treason.

The word King in the Statute of 25. *Ed. 3.* cap. 2. must be understood of the Kings naturall person: for that person can only dye, have a wife, have a sonne, or be imprisoned.

The Privilege of Parliament protects no man from treason or felony, howbeit he be a Member: much lesse can they protect others. Those who cannot protect themselves, have no colour to make Ordinances to protect others who are no Members.

The Statute of 11. *Hen. 7.* cap. 1. doth by expresse words free all persons who adhere to the King.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more doe then repeale all the Lawes of the Land, the whole and sole power by Law to pardon all Treasons, Felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27. *H. 8.* c. 24. and the Law of the Land in all times.

Having shewed the danger of the Army by the Law of the Land, next consider the Ordinance of the Lords and Commons published the 22. of May last for their Indemnity. By the ensuing discourse it doth appeare they have no Indemnity at all thereby.

The Indemnity proposed by the Ordinance, is for any Act done by the authority of the Parl. or for the service or benefit thereof: and that the Judges and all other Ministers of Justice shall allow thereof.

This Ordinance cannot secure the Army for these reasons:

# I.

3. *Parl. Hist.*  
*Reg.* 22.

2 *Parl. Hist.*  
47. 48.

1. *Parl. Hist.*  
193.

*Princes case*  
*Support.*

Their Judges are sworne to doe justice according to the Law of the Land, and therefore the Judges must be forsworne men, if they obey it: because an Ordinance of both Houses is no Law of the Land; and no man can beleeve they will perjure themselves so palpably and visibly in the eye of the world.

## II.

All trials for Treasons, Felonies, Robberies, and such like Capitall offences, are by the Law of the Land to be by indictment of a Jury appointed out of the Neighbourhood where the offence was done. There is no common Jury-man but understands what the Law is in these cases as well as the best Lawyers: and the Law makes the Jury Judges of the fact, whereby the souldier is left to their mercy whom he hath offended (as some of them have lately had wofull experience, and thereupon doe rightly apprehend their danger) Now no man can thinke that the Jurors will perjure themselves to acquit the souldiers for robbing and plundering of the Countries, and thereby utterly destroy their owne Rights and Properties.

*Magna Charta cap. 29.*

*25. Ed. 3. cap. 4.*

*28. Ed. 3. cap. 3.*

*37. Ed. 3. cap. 8.*

*42. Ed. 3. cap. 3.*

Declaration of the Army presented at *Walden*, and Printed by the appointment of the Officers subscribed.

## III.

If the Judges conceive (as they may) that the taking of other mens houses or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the souldier dyes for it: they may say to steale or rob any man of his goods is not for the Parliaments service but against it, which was alwayes the sence of the people, and doubtlesse the Jurors will not thinke otherwise.

## IV.

This Ordinance is restrained to the authority, service or benefit of the Parliament. The Lords and Commons make no more a Parliament by the Law of the Land then a body without a head makes a man: for a Parliament is a body composed of a King their head; the Lords and Commons the Members. All three together make one body, and that is the Parliament, and none other. And the Judges may, ought, and I beleve will according to their Oathes proceed as not bound at all by this Ordinance. For it is restrained to the Authority of Parliament, service or benefit thereof, whereas the two Houses are not the Parliament, but only parts thereof, and by the abuse and mis-

*4. Pars inquit.*

*pag. 1.*

*3. Pars inquit.*

*pag. 22.*

*1. Pars inquit.*

*pag. 1.*

*28. H. 8. fol. 11.*

*Dier 38. H. 8.*

*fol. 60.*

*12. H. 7. 20.*

*1. Pars inquit.*

*159.*

*Princes case*

*8. reports.*

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understanding of this word *Parliament*, they have miserably deceived the people.

V.

28 Aug. 1642. This Ordinance is against their Ordinances which expressly  
Col. of Ord. prohibit plundering, and so there is one Ordinance against ano-  
first part: 565. ther, whereby their Judges have an out-let to proceed on the  
592. 605. sever- one or the other, and thereby the Army hath no manner of se-  
rall Ordinan- curity.  
ces.

VI.

The word *Parliament* is a French word (howbeit such Assem-  
blies were before the Norman Conquest here) & signifies in that  
1. *Pars iastit.* Language to consult & treat: that is the sense of the word *Parler*  
109. in the French Tongue. The Writ whereby the two Houses are  
1 *Pars iustit.* assembled, which is called the Writ of Summons of *Parliament*,  
110. at all times, and at this *Parliament* used, and which is the war-  
4 *Pars p. 49.* rant, ground and foundation of their meeting, is for the Lords  
of the House of Peeres, the Judges and Kings Councell to con-  
sult and treat with the King (that is the *Parler*) of great con-  
cernments, touching 1. the King, secondly, the defence of his  
Kingdome, thirdly, the defence of the Church of England. It  
cannot be a *Parliament* that will not *Parle* with their King, but  
keep him in prison, and not suffer him to come to them and  
parle; and therefore the Law, and sence, and reason, informing  
every man that is no manner of *Parliament* (the King with  
whom they should parle, being so restrained that they will not  
parle with him) The Army hath no manner of security by this  
Ordinance: For their indemnification referres to that which is  
not in being untill the King be at liberty.

VII.

The Common  
Souldiers se-  
cond Apology.  
6. Grievances  
of the Army  
published 15.  
May last.  
Three grie-  
vances of Col.  
Riche's Regi-  
ment.

It is more then probable that their Judges before the last  
circuit had instructions to the effect of this Ordinance: but  
they the Judges making conscience of their Oath, laid aside the  
said Instructions, and ought, and may, and it is beleevd will no  
more regard this Ordinance, then the said instructions: What  
was done in the last circuit, the Army well knowes, touching  
many of their fellow-souldiers.

VIII.

## VIII.

The Houses in their first Proposition to his Majesty for a safe and well-grounded peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (common reason dictates this to every man) and therefore that the Army should accept an Indemnity from them, who seeke it for themselves, or should conceive it of any manner of force, is a fancy: so that no man in the whole Army but may apprehend, that it is vaine and a meere delusion.

## IX.

His Majesty by his gracious Message of the 12. of May last, the 22 of the same, hath offered an Act of Oblivion, and a generall pardon to all his people; this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath beene done: for it is an Act of Parliament when the King and two Houses concurre, and bindes all men. There is no safety by the Ordinance; There is safety by an act of Parliament: And will not reasonable men preferre that which is safe before that which is unsafe?

## X.

His Majesty by his said Letter agrees to pay the Arreares of the Army; I am sure that it is a publique Debt, and the chiefest and the first that by the two Houses should be paid, and before any Divident or Gratuities bestowed among themselves; for their Blood, Limbes, and Lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your Arreares, The Army have not an Ordinance, or the Publique Faith, but the Law of the Land to make sure unto them their Indemnity for all Acts, and for their Arreares, and therewith also bring peace to the Land.

## XI. The

Mr Pym  
Speech against  
the Earle of  
Stafford. p. 16  
Sixt considera-  
tion Printed  
by the com-  
mand of the  
House of Com-  
mons.

The Kingdome and people generally desire these things. To such an Army, just and reasonable things must not be denied; the things formerly proposed are most just and reasonable, you may have them if you will; if you will not, you render this Kingdome miserable; wherein you will have your shares of miseries: The head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The Additional Ordinance of both houses passed the fifth of June instant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that it extends not to Felony, Homicide, Burglary, Robbery, or any other capitall crime, which is the maine businesse insisted upon, and most concerneth the Souldiers security.

## II.

The both Houses in the said Additionall Ordinance, say, that it is expedient that all offences be pardoned and put in oblivion. Pardon and Oblivion cannot bee understood to bee for a time, but for ever: and they themselves confesse, that an Ordinance is not binding but *pro tempore*. which with the most advantageous Interpretation can be but a reprieve, or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their owne shewing.

27. H. 8. c. 24.

But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons of what estate soever, have any power to pardon Treason, Felony, or any other offences but the King onely, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no Authority at all to take away the right of private mens actions, by any evidence it can give: In truth all the evidence that this Ordinance will give is, that it records to posterity nothing but a lawlesse and distempered time.

For remedy therefore I say againe, it is a certaine truth, This Kingdome without an act of Oblivion, and a generall Pardon, and



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and the payment of Soldiers arrears, and a meet regard had  
to tender Consciences, will unavoidably be ruined.

June 10. 1647.

*David Jenkins,*  
Prisoner in the Tower  
of London.



Sundry Acts of Parliament mentioned  
and cited in the Armies Indemnities:  
set forth in words at large for the better satis-  
faction of such as desire to  
be rightly informed.

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25. Edw. 3. Chap. 2. *A Declaration what offences shall be  
adjudged Treason.*

**V**Hereas divers opinions have been before this time, in  
what case Treason shall be said, & in what not: The K.  
at the request of the Lords and of the Commons hath made a  
Declaration in the manner as hereafter followeth: That is to  
say, When a man doth compasse, or imagine the death of our  
Lord the King, or of our Lady the Queen, or of their eldest Son  
and Heire: or if a man do violate the Kings companion, or the  
Kings eldest daughter unmarried, or the wife of the Kings el-  
dest sonne and heire: or if a man do levie war against the Lord  
our King in his Realme, or bee adherent to the Kings enemies

B

in

in his Realm, giving to them aid and comfort in the Realme, or else-where, and thereof be probably attainted of open deed by people of their condition; And if a man counterfeit the Kings great or privie Seale, or his Money: and if a man bring false money into this Realm, counterfeit to the money of *England*, and the money called *Lusburgh*, or other like to the said money of *England*, &c.

*II. Hen. 7. Cap. 1. None that shall attend upon the King, and doe him true service, shall bee attainted or forfeit any thing.*

**T**He King our Sovereign Lord calling to his remembrance the duty of allegiance of his Subjects of this his Realm, and that they by reason of the same are bound to serve their Prince and Sovereign Lord for the time being in his wars, for the defence of Him and the Land, against every rebellion power and might raised, reared against him, and with him to enter and abide in service in battell, if case so require, and that for the same service what fortune ever fall by chance in the same battell against the minde and will of the Prince (as in this Land sometime passed hath been seen) that it is not reasonable, but against all lawes, reason and good conscience, that the said Subjects going with their Sovereigne Lord in wars, attending upon him in his person, or being in other places by his commandement within this Land or without any thing should lose or forfeit, for doing their duty or service of Allegiance. It be therefore ordained, enacted, and established by the King our Sovereigne Lord, by the advice and assent of the Lords spiritual and temporall, and the Commons in this present Parliament assembled, and by authority of the same, that from henceforth no manner of person or persons whatsoever he or they be, that attend upon the King and Sovereigne Lord of this Land for the time being, in his person, and doe him true and faithfull service of allegiance in the same, or be in other places by his commandement in his wars, within this Land or without, that for the said deed and true duty of allegiance he or they be in no wise  
con-



convict or attain of high treason, nor of other offences for that cause, by act of Parliament, or otherwise by any processe of Law, whereby hee or any of them shall lose or forfeir life, lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things, but to be for that deed and service utterly discharged of any vexation, trouble, or losse. And if any act or acts, or other processe of the Law hereafter thereupon for the same, happen to be made contrary to this Ordinance, that then that act or acts, or other processe of the Law, whatsoever they shall be, stand and be utterly void. Provided alwaies, that no person or persons shall take any benefit or advantage by this Act, which shall hereafter decline from his or their said allegiance.

*Cap. 24.* In the Statute of 27. *H. 8.* It is enacted, that no person or persons of what estate or degree soever they be of, shall have any power or authority to pardon or remit any treason, murders, man-slaughters, or any kinde of Fellowies, &c. but that the King shall have the sole and whole power and authority thereof united and knit to the Imperiall Crowne, as of right it appertaineth, &c. And in the same it is enacted further, that none shall have power, of what estate, degree, or condition soever they be, to make Justices of Eyre, Justices of Assize, Justices of the Peace, &c. but all such officers and Ministers shall be made by Letters Patents under the Kings great Seale in the name and by the authority of the King and his Heires and Successors Kings of this Realme.

In the first yeare of *Queen Mary*, and the first Chapter, It is enacted by the *Queen*, with the consent of the Lords and Commons, That no deed, or offence, by Act of Parliament made treason, shall be taken, deemed, or adjudged to be high treason, but only such as be declared and expresse to be treason by the Act of Parliament, made 25. *Ed. 3. cap. 2.* before mentioned.



A Declaration of *M. David Ienkins*,  
now Prisoner in the Tower of *London*,  
one of His Majesties Iudges in *Wales*, for  
tryalls of Treasons, Murthers, Felonies, and  
all other capitall crimes, that they ought only  
to be by Iuries and not otherwise, unlesse  
it be by Act of Parliament.

**T**He common Law of this Land is, That every free-  
man is subject to a tryall by bill of Attainder in Parli-  
ament, wherein His Majesty and both Houses must  
necessarily concur, for that tryall and attainder is an  
Act of Parliament to which all men are subject to:

*a Mag. Charl.*  
*cap. 29. 2 part.*  
*instit. fol. 28*  
*29. 46. 48. 49.*  
*50. composed*  
*by Sir Ed. Cooke*  
*and published*  
*by the Order of*  
*the House of*  
*Commons in*  
*May 1641.*

¶ No man shall otherwise be destroyed, &c. but by the lawfull  
judgement of his Peers, or by the common Law of the Land.  
Peers to Noblemen are Noblemen, Peers to the Commons are  
Knights, Gentlemen, &c. Judgement of Peers refers to Peers,  
those words, *The Law of the Land*, refers to the Commons; the  
Law of the Land is for the tryall of the life of a free Commoner,  
by Indictment, Presentment of good and lawfull men  
where the deed is done, or by Writ originall of the common  
Law, all this is declared in *Magna Charta* c. 29. and by 25.  
*Ed. 3. c. 4. 28. Ed. 3. c. 3. 37. Ed. 3. c. 8. 41. Ed. 3. c. 3.* If the Lords  
will try any man by an Ordinance, they destroy that excellent  
Act of *Magna Charta*, and all those other good Lawes.

Sir *Simon de Bereford* a free Commoner of *England* was  
condemned by the Lords to death by an Ordinance, which af-  
ter the Lords better considering the matter, that they might be  
acquitted of that sentence, became suters to the King, that  
what

what they had so done in future time might not be drawn into president, because that which they had so done was against the Law, *b* with this agrees the practice and usage of all times in this Land, all the free Commoners of this Kingdome have alwayes been tryed and acquitted or condemned in capitall causes by Jurers of their equalls.

An Ordinance bindeth not in Law at all, *c* and but *pro tempore*, as the two Houses now affirme, a mans life cannot be tryed by that which is not binding, and to continue for all times, for a life lost cannot be restored.

By an Act of Parliament of the 1. and 2. of *Philip and Mary*, chap. 10. It is enacted that all tryalls for Treason hereafter to be had, shall be according to the course of the common-law.

If the crime charged upon any be treason against the two Houses (against the Parliament it cannot be, for there is no Parliament without the King) that is no Treason in Law, as appeares by 25. *Ed. 3. chap. 2.* 11. *R. 2. chap. 3.* 1 *Hen. 4. cha. 10.* 1. and 2. *Philip and Mary*, chap. 10. 3 part. of the institutes Page 23.

An Act of Parliament to make any a Judge where he is party, is a void act, *d* for none can be a Judge and party in the same cause, and therefore the House of Peers being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both Houses, cannot be a Judge.

By the Petition of Right, *e* if any man deserve death he ought to suffer the same according to the Lawes of the Land established, and not otherwise; but an Ordinance of the Lords is no established law.

The Protestation, the Vow and Covenant, the solemne League and Covenant, the Declarations of both Houses, had, made and published since this unnaturall Warre, are amongst other things sworne and set downe to be for the maintenance of the Lawes, the people of this land ought to enjoy the benefit of their Birth-right the Law of the Land, and the making good of the said Protestation, Vow and Covenant, League and Covenant, and Declarations, otherwise truth must

*b* Rot. Par. 1. roule 4. E. 3. Num. 2. part inst page 50. with this *a.* grees Sir *Joan Leescap*, Rot. Par. 42. E. 3. Num. 22. 23. 2. inst. fol. 50. *c* See 4. part. inst. fol. 23. 48. 292. 2. part. inst. f. 47. 48.

*d* Dr *Bonham* case 8. part of *Cooks reports.*

*e* Petition of Right. 3. *Car. Regis.*

be

be said and will be said, that there is brought in a new arbitrary and tyrannicall government.

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more, and the case differs in case any appeale be made from a tryall by Ordinance to a tryall at common law, which was not done by that man whose life was taken away by an Ordinance.

*f Nevells case  
8. part Cooks  
reports.*

*g 4 Pars infis.  
fol. 4. 9.*

The Lords ought to remember, that his Majesty and his Progenitors have made them a house of Peeres, they are trusted to countell him in peace, f and defend him in war, his Majesty in Parliament is to consult and treat with the Peers, and with his Counsell at Law, Judges, his Sergeants, Attorney, and Solicitor, and Masters of the Chancery, the Lords and that counsell by the respective Writs of Summons to Parliament are to give Counsell, g the House of Commons by their Writ to performe and consent.

*b 1 H. 7 fol. 20.  
\* 14. Ed. 3. c. 5.*

In the House of Lords, the Court of Parliament only is, for they only examine upon oath, b with them, the King in person sits, and by them there erroneous judgements \* (upon a Petition to his Majesty for obtaining of a Writ of Error) by the advice of the Judges are reversed, or affirmed, &c. the Lords are to remember that their eminency and grandeur, is preserved by the Laws, if they leave all to will, and dishonour their King, and make nothing of the Lawes, they will make nothing of themselves in the end.

*i See 1 part.  
book de cl. pag.  
140. 163.*

And therefore, it is well worth your observation what was said by Mr John Pym a Member of the House of Commons in his speech against the Earle of Strafford, in the beginning of the Parliament, which speech is published by the expresse order of the House of Commons, the words are these. *The Law is that which puts a difference betwixt good and evil, betwixt just and unjust, if you take away the Law, all things will fall into a confusion, every man will become a Law unto himselfe, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and Envy will become a Law, Covetousnesse and Ambition will become Lawes, and what dictates, what decisions such Lawes will produce, may easily be discerned, i &c.* They that love this Com-  
mon-

mon-wealth as things now stand, will use all meanes to procure an Act of Oblivion, a generall pardon from his Majesty, the Souldiers their Arrears, and tender consciences a just and reasonable satisfaction, else we all must perish, first or last.

Mai. 17. 1647.

*God preserve His Majesty, and  
the Lawes wherein their Lord-  
ships and the whole Kingdome  
are concerned.*

*David Jenkins Prisoner in  
the Tower of London.*

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**FINIS.**

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(c)

23 JY 89

23 JY 69



TO THE  
HONORABLE  
Societies of Grayes-Inne, and of  
the rest of the Innes of Court,  
and to all the Professors of the  
LAW:

*Rawl. A. 8.*

I Have now spent Forty five yeares in the Study of the Lawes  
of this Land being my profession, under and by the conduct of  
which Lawes this common-wealth hath flourished for some ages  
past in great splendor and happinesse (jam leges est ubi Troja fuit)  
The great & full body of this Kingdom hath of late yeares fallen  
into an extreame sicknesse it is truly said that the cause of the  
disease being knowne, the disease is easily cured. There is none  
of you I hope, but doth heartily wish the recovery of our com-  
mon parent, our native country (Moribus antiquis stat res  
Britannica) I call God to witnes that this discourse of mine hath  
no other end than my wishes of the common good: how farr I have  
been from Ambition, my life past, and your owne knowledge of  
me, can abundantly informe you, and many of you well know,  
that I never detested the ship-mony and monopolies, & that in the  
beginning of this Parliament, for opposing the excesses of one of  
the Bishops, I lay under three Excommunications and the Ex-  
amination of severnty seven Articles in the high Commission  
Court. His sacred Majesty: (God is my witnes) made mee  
a judge in the parts of Wales against my will, and all the meanes  
I was able to make; and a patent for my place was sent mee  
A for



for the Which I have not paid one farthing, and the place is of so in-  
considerable a benefit that it is worth but 80. l. per Annum when  
paid, and it cost me every yeare I served twice as much out of  
mine owne estate in the way of an ordinary and frugall expence.  
That which gave me comfort was that I knew well that his Ma-  
jesty was a just and a prudent Prince.

In the time of the Attourneyships of Master Noy and the Lord  
Banks, they were pleased to make often use of me, and many refer-  
rences concerning suits at Court upon that occasion came to my  
knowledge, and as I shall answer to God upon my last account this  
is truth, that all or most of the references which I have seen in  
that kind (and I have seen many) were to this effect, That his  
Majesty would be informed by his Counsell if the suits preferred  
were agreeable to the Lawes, and not inconvenient to his people,  
before he would pass them. [What could a just and pious Prince  
do more?] Gentlemen: you shall find the Cause and the Curse of  
the present great distemper in this discourse, and God Prosper it  
in your hands, thoughts, and words, as the Case deserves.

Hold to the Lawes, this great body recovers: forsake them,  
it will certainly perish. I have resolved to tender my selfe a  
Sacrifice for them as cheerefully, and I hope (by Gods assistance)  
as constantly as old Eleazer did for the holy Lawes of his Nati-  
on.

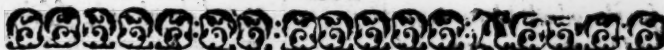
Your well-wisher

DAVID JENKINS.

Now Prisoner in the Tower.

L & X





# LEX TERRÆ.

**T**HE Law of this Land hath three grounds. First *Custom*. Secondly *Judiciall Records*. Thirdly *Acts of Parliament*. The two latter are but declarations of the *Common-Law* and *Customs* of the Realme, touching *Royall Government*. And this Law of *Royall Government*, is a *Law-Fundamentall*.

The Government of this Kingdome by a *Royall Sovereign*, hath beene as ancient as history is, or the memoriall of any time; what power this *Soveraignty* alwayes had and used in warre and peace in this land, is the scope of this discourse. That *Vsage* so practised makes therein a *Fundamentall Law*, and the *Common-Law* of the Land is common *Vsage*, *Plowdens Commentaries*. 195.

The kings prerogative is a principall part of the common Law. *Com: Lill: 344:*

For the first of our Kings sithence the Norman conquest, the first *William*, second *William*, *Henry* the first, *Stephen*, *Henry* the second and *Richard* the first, the Customs of the Realme, touching *Royall Government*, were never questioned: The said Kings enjoyed them in a full measure. In King *Iohns* time the Nobles and Commons of the Realme conceiving that the ancient customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King *Iohn* the said Liberties were by King *Iohn* allowed, and by his son *Hen.* the third, after in the ninth yeere of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foresta* declared foure hundred twenty two yeeres sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customes (and the fundamentall Rights of the King as *Sovereign* are no other.) How the Rights of *Soveraignty* continued in practise from *Henry* the thirds time untill this present Parliament of the third of November 1640. for before *Henry* the thirds time, the *Soveraignty* had a very full power.

*Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea qua sunt jurisdictionis & Pacis ad nullum pertinent*

Bracton  
tamps. H.  
3. lib. 4.  
cap. 24.  
Scilicet 1

pertinent nisi ad Regiam dignitatem, debet etiam coercionem, ut Delinquentes puniat & coerceat; This proves where the supreme Power is.

Scilicet 5  
Bracton ibid.

A Delinquent is hee who adheres to the Kings Enemies Com Sur. Littl. 261. This shewes who are Delinquents.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo. This shewes where the supreme power is.

Bracton  
lib. 5. tract 18.

Rex non habet superiorem nisi Deum, satis habet ad poenam quod Deum expectat ultorem. This shewes where the supreme power is.

3. de de  
falsis Cap.  
3. Bracton.  
Lib 3. Cap.  
7.

Treasons, Felonies, and other Pleas of the Crowne, are propria causa Regis. This shewes the same power.

By these passages it doth appeare what the Custome was for the power of Sovereignty before that time; the power of the Militia, of coining of Money, of making Leagues with forreigne Princes, the power of Pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

Edward 1.

Sexto Ed. 1. Com sur. Littl. 85. Liege Homage, every Subject owes to the King (viz) Faith de Membro, de vita, de terreno Honore, the forme of the Oath inter vetera statuta is set down; We read of no such, or any Homage made to the two Houses but frequently of such made by them.

7. Ed. 1.  
statuta  
largesol.  
42.

It is declared by the Prelates, Earles, Barrons, and Commonalty of the Realm, that it belongeth to the King and his Royall Segniory, straitly to defend force of Armour, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary according to the Law and Usage of the Realme, and hereunto they are bound to ayde their Sovereigne Lord, at all seasons when need shall be. Here the supreme power in the time of Parliament, by both Houses is declared to belong to the King.

7. Ed. 2. 4.  
pars instit.  
14.  
3. Ed. 2.  
de Militibus.

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be born in London, Westminster, or the Suburbs. This condemnes the multitudes comming to Westminster, and the Guards of armed men.

All who held by Knights-service, and had twenty pounds per annum, were disraynable ad Arma militaria suscipienda. This agrees

grees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November 1640. The King, out of his grace, discharged this duty, which proves that the power of warre and preparation thereto, belongs not to the two houses, but only to the King.

The two *Spencers* in *Ed. 2.* time batched (to cover their Treason) this damnable and damned opinion (*viz.*) That Ligeance was more by reason of the Kings politique capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crown, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law it was to be done by force. Thirdly, that his Lieges be bound to govern in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in *Ed. 2.* time; the other by 1. *Ed. 3.* cap. 2. All which Articles against the *Spencers* are confirmed by this last Statute, the Articles are extant in the booke called *vetera Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execrable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two Houses found their Cause,

The Villeing of a Lord, in the presence of the King, cannot be seized for the presence of the King is a protection for that time to him: This shewes what reverence the Law gives to the person of a King.

*Reges, sacro oleo uncti sunt capaces spiritualis jurisdictionis* But the two Houses were never held capable of that power.

*Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spiritualem jurisdictionem.* This shewes the Kings power in Ecclesiasticall Causes.

The lands of the King is caled in Law *Patrimonium sacrum*. The houses should not have meddled with that sacred Patrimony.

The King hath no Peere in his land, and cannot be judged? Er- go the two Houses are not above him.

The Parliament 15. *Ed. 3.* was repealed, for that it was against the Kings Lawes and prerogative. 4 *part. insti* fol. 52. this shewes cleer-

*Ed. 3.  
Calvins  
case 600 k  
1.7. fol. 1*

*Plowden  
com. 312.  
27. ass. pl.  
49.*

*33 Ed. 3:  
ayde de roy  
103 Fitz.  
10 H. 7  
16:*

*Cam. Sur  
Libel Soli  
4.  
3. Ed. 3.  
19.*

cloerely the propositions sent to Newcastle, ought not to have been presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

4 pars  
Cookes in-  
stit. fol. 14  
42.E.3.

Parlia-  
ment Rol.  
num. 7.  
Lex &  
consuetudo  
Parlia-  
mentii.

25.Ed. 3.  
cap. 2.

The Lords and Commons cannot assent in Parliament to any thing that tends to the dishonour of the King and his Crowne, to which they are sworn. This condemnes the said Propositions likewise.

To depose the King, to imprison him untill he assent to certaine demands, A war to alter the Religion established by Law, or any other Law, or to remove Councillors, to hold a Castle or Fort against the King; are offences against that Law declared to be treason by the resolutions herein after mentioned, by that Law men are bound to ayd the King when war is levied against him in his Realme. King in this Statute must be intended in his naturall body and person that only can die; for to compass his death, and declare it by overt Act is declared thereby treason, to incounter in fight such as come to ayd the King in his wars, is treason.

21.Ed.  
4.14.

Compassing of the Queenes death, of the Kings eldest son, to coyne his money, to counterfeit his Great Seale, to levie Warre against him, to adhere to such as shall so do, are declared by that Act to be high Treason. This Statute cannot refer to the King in his politique capacity, but to his naturall, which is inseperable from the politique, for a body politique can have neither Wife nor Child, nor levie Warre, nor do any Act but by the operation of the naturall body: A Corporation or body politique hath no soule or life, but is a fiction of the Law, and the Statute meant not fictitious persons, but the body naturall, conjoynd with the publique, which are inseperable.

R. 2. 11.  
a 110 ca.  
13.  
4 pars in-  
stit. fol. 42.

The clause in that Act, that no man should sue for grace or pardon for any offence condemned, or forfeiture given by that Act, was repealed by a subsequent Act in 21.R. 2. holden unreasonable, without example and against the Law and custom of the Parliament. This condemnes the Proposition for disabling the King to Pardon. 4. pars instit. fol. 42. The Act of 1 R. 2. so much urged by the other side, was an Act to the which the King consented, and so a perfect Act: yet Note the Army then about the Town: Note that that Law is against private persons, and by the 3. cap. thereof, the Treasons there declared are declared to be new Treasons

Treasons

Treasons made by that Act, and not to be drawne to example, it was abrogated 21. R. 2. and revived by an usurper 1. H. 4. to please the people, and by the tenth chap. thereof enacts that nothing shall be treason but what is declared by 25. Ed. 3.

16. R. 2.  
cap. 5.

The Regality of the Crown of England is immediately subject to God and to none other. Plaine words, shewing where the supreme power is.

H. 4.

The Commission of Array is in force and no other Commission. Rot. Parlm. 5. H. 4. numb. 24. an Act not printed, this Act was repealed by 4. and 5. P. & M. cap. 2. this repealed by the Act of 1. Jacobi and so it is of force at this day, for the repealing Statute is repealed 4. pars instrum. fol. 51. & 125. published since this Parliament, by the desire of the house of Commons, their Order is printed in the last lease of the commentaries upon Magna Charta.

Sir Edward Cooke, by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calme and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

A booke  
allowed by  
Sir Nat.  
Event, cal-  
led the rea-  
son of the  
War: fol.  
65.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the Answer is, that in levying of publick ayds upon mens goods & estates, which are variable, and probably cannot be certainly knowne by any but the owners, it is impossible to avoid discretion in the assessments, for so it ever was, and ever will be. By this appeares that the Votes of the two houses against the commission of Array, were against the Law.

The death of the King dissolves the Parliament, if Kings should refer to the politique capacity it would continue after his death 4. pars Instr. 46. which proves that the King cannot be said to be there when he is absent, as now he is: there is no *interregnum* in the Kingdome the dissolution of the Parliament by his death, shewes that the beginning and end thereof refers to the naturall person of the King, and therefore he may lawfully refuse the Propositions.

H. 5.

2. H. 5.  
4 pars ix-  
bit 46.

2. H. 5. Chap. 6. to the King only it belongs to make Leagues with Forraigne Princes: this shewes where the supreme power is.

8. H. 6.



H. 6.

8. H. 6. numb. 57. Rot. Parl. Coker 4. p. 10. in fin. 25. No privilege of Parliament is grantable for treason, Felony, or Breach of the Peace, if not to any one member, nor to two, nor to ten, nor to the Major part, 19. H. 6. 62. The Law is the inheritance of the King and his people by which they are ruled, King and people; And the people are by the law bound to ayde the King, and the King hath an inheritance to hold Parliaments and in the ayds granted by the Commonalty. If the major part of a Parliament commit treason they must not be Judges of it, for no man or body can be Judge in his owne cause, and aswell as ten or any number may commit treason, the greater number may aswell.

32. H. 6.

13. Plowd.

334.

The King by his letters patents may constitute a County palatine and grant Regall rights, this shewes where the supreme power is.

Ed 4.

17. Ed 4. rot parl. numb. 39. No privilege of Parliament is grantable for Treason, Felony, or Breach of the peace, if not for one, nor for two or more, or a Major part.

Calvins

Case 7 pars

fol. 11 12

The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21. E. 4. 13. and 14. but the persons of the men who make that body may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soul, no life, and subsists only by the fiction of the Law, and for that reason the Law doth conclude as aforesaid; therefore the statute of 25. E. 3. must be intended of the Kings naturall person conjoynd with the politique which are inseparable and the Kings naturall person being at Holmby, his politique is there also, and not at Westminster; for the politique and naturall make one body indivisible.

Plow.com.

213:

19. Ed. 4.

46.

22. Ed. 4.

Fix: ju-

risdiction.

last pla-

cite.

If all the people of England should breake the league made with a forreigne Prince, without the Kings consent, the league holds and is not broken; and therefore the representative body is inferior to his Majesties.

The King may erect a Court of Common-pleas in what part of the kingdome he pleaseth by his letters patents; can the two houses do the like?

1. *Ed. 5. fol. 2.* It cannot be said that the King doth wrong, *Ed. 5.*  
declared by all the Judges and Serjants at Law then there. *4 Ed. 4. 29.*

The reason is, nothing can be done in this Common wealth *5 Ed. 4. 29.*  
by the Kings grant or any other act of his, as to the subjects persons, goods, lands or liberties, but must be according to established lawes, which the Judges are sworn to observe and deliver betwene the King and his people impartially to rich and poor, high and low; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Lawes be violated: And no reflection to be made on the King. All Counsellors and Judges for a yere and three months untill the tumults began this Parliament were all left to the ordinary course of Justice, what hath beene done since is notorious.

For great Causes and considerations an act of Parliament *R. 3.*  
was made for the surety of the said Kings person; if a Parliament were so tender of King *Rich. the 3.* the houses have greater reason to care for the preservation of his Majestie. *1 R. 3. cap. 15.*

The Subjects are bound by their allegiance to serve the King *H. 7.*  
for the time being against every Rebellion, power and might, reared against him within this land, that it is against all lawes, reason and good conscience, if the King should happen to be vanquished, that for the said deede and true duty and allegiance they should suffer in any thing, it is ordained they should not: and all acts of proccesse of law hereafter to be made to the contrary are to be void, This law is to be understood of the naturall person of the King, for his politike capacity cannot be vanquished; nor war reared against it. *11 H. 7. cap. 1.*

Relapsers are to have no benefit of this act.

It is no statute, if the King assent not to it, and he may dissent, this proves the negative voice. *11 H. 7. 10. H. 8.*

The King hath full power in all causes to doe justice to all men this is affirmed of the King, and not of the two Houses. *24 H. 8. cap. 10. 25 H. 8. cap. 12.*

The commons in Parliament acknowledg no superior to the King under God, the houses of Commons confesse the king to be above the representative body of the Realme.

Of good right and equity the whol & sole power of pardning *27 H. 8. cap. 24.*  
treasons, felonies &c. belong to the King, as also to make all *Note.*

Justices of Oyer & Terminer, Judges, Justices of the peace, &c. This law condemns the practice of both houses at this time.

The kings royall assent to any Act of Parliament signed with his hand expressed in his Letters-patents under the great Seale, and declared to the Lords and Commons shall bee as effectually, as if he assented in his owne person; a vaine act if the King be virtually in the Houses.

The King is the head of the Parliament, the Lords the principal members of the body, the Commons the inferior members, and so the body is composed, therefore there is no more Parliament without a king, then there is a body without a head.

There is a corporation by the Common-law, as the King, Lords, and Commons, are a corporation in Parliament, & therefore they are no body without the King.

The death of the King dischargeth all mainprise to appeare in any Court, or to keepe the Peace.

The death of the King discontinues all pleas by the Common-law, which agreeth not with the virtuall power insisted upon now.

Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death; Where is the virtuall power.

All authority and jurisdictions spirituall and temporall is derived from the King, therefore none from the Houses.

His Majesties subjects, according to their bounden duties, ought to serve the king in his warres, of this side or beyond the Seas; beyond the seas is to be understood for wages: This proves the power of warres, and preparation for war to be in the king.

It is most necessary both for common policy and duty of the subject, to restrain all manner of shamefull slanders against the king, which when they be heard, cannot but be odible to his true and loving subjects, upon whom dependeth the whole unity & universal weale of the realm. This condemns their continuing of the weekly pamphlets, who have been so foule mouthed against his Majesty.

The punishment of all offenders against the lawes, belongs to the king, and all jurisdictions doe, and of right ought to belong to the King. This leaves all to his Majesty.

All



All Commissions to levy men for the warre, are awarded by 45 P & M. c. 3  
the king. The power of warre only belongs to the king. 2. Elix.

It belongs to the king to defend his people, and to provide 10 Elix Pl 315  
Armes and Force. No speech of the two Houses.

*Roy ad sole government deses subjects. Corps naturall le Roy* Plow. 234. 242  
& *politique sunt un corps*, that is, The king hath the sole govern- 213. Calvins  
ment of his Subjects, the body politique and the naturall body case 7. pars fol  
of the king make one body and not divers, and are inseparable 12.  
and indivisible. Plow. com. 213

The body naturall and politique make one body, and are not  
to be severed: Ligeance is due to the naturall body, and is due Plow. 974 243.  
by nature; Gods Law, and Mans law, cannot be forfeited nor 213. Calvins  
renounced by any means, it is inseparable from the person. case 7. pars fol.  
12.

Every Member of the House of Commons, at every Parlia- 1 Elix, cap. 1.  
ment, takes a corporall Oath. That the King is the Supreme and Cawdries case.  
only Governour in all Causes, in all his Dominions, otherwise 5. pars fol. 1.  
he is no Member of that House; the words of the Law are, In  
all Causes, over all persons.

The said Act of 1 Elix. is but declarative of the ancient Law,  
*Cawdries Case ibid.*

The Earle of Essex, and others, assembled multitudes of men  
to remove Councillors, adjudged Treason by all the Judges of 43 Elix.  
England. 3 pars instit. fo.  
6.2.

To depose the king, or take him by force, to imprison him un- 39. Elix.  
till he hath yielded to certain demands, adjudged Treason, and Hist. 1 Jacobi  
adjudged accordingly in the Lord *Cobhams Case*. ibid.

Arising to alter Religion established, or any Lawe, is Treason; 39 Ed. B adf.  
so for taking of the Kings Castles, Forts, Ports or Shipping case f 9. & 16.  
*Brookes treason* 24. 3 & 4. Philip and Mary, Dier, Staffords by all the  
Case concerning Scarborough. Judges of Eng-  
land ibid.

The Lawe makes not the servant greater then the Master, nor 10 Elix Plow,  
the subject greater then the King, for that were to subvert Or- 316.  
der and Measure.

The Law is not knowne but by Usage, and Usage proves the 10 Elix. Plow,  
Law, and how Usage hath been is notoriously knowne. 319.

The King is our only Rightfull and lawfull Liege Lord and K. James.  
Soveraigne, We doe upon the knees of our hearts agnize con- 1 Jac. cap. 1.  
stant Faith, Loyalty and Obedience to the King and his Royall 9 Ed. 4 fol. 8.

progeny, in this high Court of Parliament, where all the body of the Realme is eyther in person or by representation: We doe acknowledge that the true and sincere Religion of the Church, is continued and established by the King. And doe recognize, as we are bound by the Law of God and Man, the Realme of England and the Imperiall Crowne thereof doth belong to him by inherent byrth-right, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule; and beseech the king to accept the same as the first fruits of our Loyalty and Faith to his Majesty and his posteritie for ever, and for that this Act is not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their Titles to the Crowne by the two Houses, but by inherent byrth-right, and that there can bee no Statute without his expresse assent, and destroyes the chymera of the Kings virtuall being in the Houses.

3 Jac. cap. 4.

To promise obedience to the Pope, or any other State, Prince or Potentate, other then the King his Heires and Successors, is Treason; and therefore those persons who call the Houses the Estates offend this Lawe.

R. Charles.

Collection of

Ordinances fo.

727. 1 pars 16.

fol. 728.

Such Bills as his Majesty is bound in Conscience and Justice to passe, are no Law without his assent.

To designe the ruine of the Kings person, or of Monarchy is a monstrous and injurious charge.

ibid: fol. 865.

*Ubi Lex non distinguit, non est distinguendum*, all the aforesaid Acts and Lawes doe evidently prove the Militia to belong to the king: that the king is not virtually in the two Houses: that the king is not considerable separately in relation to his politique capacity: that the king is not a person trusted with a power, but that it is his inherent byrth-right, from God, Nature and Lawe, and that hee hath not his power from the people: These Lawes have none of those distinctions of naturall and politique, *abstractum & concretum*, power and person, in *Cæsars* time this Island had kings, and ever since, which is almost 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdom by the people: A parliament never made king, for they were kings before

before, the Parliament are summoned by the kings Writts, which for Knights Citizens and Burgeses begins thus, viz.

*Rex vic. Wilts. Saltem. Quia Nos de avifamento & assensu consilij nri. pro quibus. arduis & urgentib. negotiis nos statum & defensionem Regni nri. Ang. & Eccles. Anglic. concernentibus quoddam Parliamentum nrum, apud B. teneri ordinavimus & ibidem cum Prelatis Magnatib. & proceribus dicti Regni nri. Colloqui. habere & tractatum, ipsi Vicecomiti precipimus firmiter injungendo qd. facta Proclamatione in prox. Comitatu tuo post receptionem ejusd. Brevis, duos Milites gladiis cinctos, &c. eligi facias ad faciendum & consentiendum his qua tunc ibidem de Communi consilio nro. Angl. faventi Deo contigeris ordinari super Negotiis antedictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Milium, Civium, & Burgesium pred. dicta negotia nra. infecta non remanerent.*

The King is Principium, caput & finis Parliamenti, the body makes not the head, nor that which is posterior that which is prior: *concilium non est Preceptum, consilij non sunt Præceptores*, for Counsell to compell a consent, hath not bene heard of to this time in any age, and the house of Commons, by the writt, are not called ad *concilium*; the Writts to the twelve Judges, Kings Councell, twelve Masters of the Chancery are *concilium impensuri*, and so of the Peeres. The writts for the Cominalty, *Ad faciendum & consentiendum*. Which shewes what power the representative body hath, they have not power to give an oath; neither do they claime it.

4 pars Instit: fol. 3 & 4.

The King at all times, when there is no parliament, & in Parliament is assisted with the advice of the Judges of the Lawe, 12 in number, for England at least hath 2 Sergeants when fewest: an Attorney and Solicitor, twelve Masters of the Chancery, his Councell of State, consisting of some great Prelates and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwaies of great substance, which is not preserved but by the keeping of the Lawe, The Prelates versed in divine Lawe, the other Grantees in affaires of State & managery of Government, The Judges, Kings Sergeants, Attorney, Solicitor, and Masters of the Chancery versed in the Lawe and Customes of the Realme: All

The Oath of the Justices 18 of E. 3. among Statutes of that yere.

sworn to serve the King and his people justly & truly, the King is also sworn to observe the Lawes, and the Judges have in their Oath a clause, That they shall do common right to the Kings people, according to the established Lawes, not withstanding any command of the King to the contrary, under the Great Seale or otherwise. The people are safe by the Lawes in force without any new : The Law finding the Kings of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Grants in his Minority, ( there are many great persons living hold many a thousand pound a yeare by Patents from *Edward* the sixth, passed when he was but ten yeares of age ) not to be bound to any Law to his prejudice, whereby he doth not binde himselfe; power of warre and peace, coyning of Money, making all Officers, &c. The Lawe, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3. *Nov.* 1640.

It will bee said notwithstanding all this fence about the Lawes, the Lawes have beene violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answer to this is evident : There is no time past, nor time present, nor will there bee time to come, so long as men manage the Lawe, but the Lawes will be broken more or lesse, as appears by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. *Jan.* 1641. being then driven away by Tumults. And the Houses for a yeere and almost three Moneths : From 3. *Nov.* 1640 to 10 *Jan.* 1641. as aforesaid, being a yeere and almost three moneths, had time and liberty to question all those persons who were eyther causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, What hath beene done this way ? Both houses in *Henry* the eightstime tendred to him a Bill to bee

bee passed called commonly the Bill of the six Articles; this was conceived by them to be a just and a necessary Bill : Had not *Henry* the eighth done well to have refused the passing of this bill? both houses tendered a bill to him to take the reading of the Scriptures from most of the laity : had not King *Henry* the eight deserved much prayse to reject this bill? In *Queene Maryes* time both houses exhibited a bill to her to introduce the Popes power and the Roman Religion; had not *Queen Mary* done well to have refused this bill? Many such instances may be given. The two Houses now at Westminster I am sure will not deny but the refusall of such Bills had beene just, the King being assisted as aforesaid, and why not so in these times?

For the Civill Government what a bill did both houses present to *Richard* the third, to make good his title to the Crowne; had it not beene great honour to him to have rejected it? what bills were exhibited to *Henry* the eight by both houses for bastardizing of his daughter *Elizabeth*, a *Queene* of renowned memory, to settle the Crowne of this Relme, for default of Issue of his body, upon such persons as he should declare by his letters Patents or his last will, and many more of the like? had not this refusall of passing such bills magnified his vertue and rendred him to posterity in a different Character from what he now hath?

And by the experience of all times and the consideration of human frailty this conclusion is manifestly deduced, that it is not possible to keepe men at all times (be they the houses, or the King and his counsell) but there will be sometimes some deviation from the Lawes, and therefore the constant and certain powers fixed by the ancient Law must not be made void, and the Kings Ministers; the Laws do punish where the Law is transgressed, and they only ought to suffer for the same.

In

In this Parliament the houses exhibited a bill to take away the suffrages of Bishops in the upper house of Parliament, and have sithence agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this bill with *Le Roy s'avisera*, or *ne vult*. it was against *Magna Charta*; *Articuli Cleri* and many other acts of Parliament. And might have farther given these reasons if it had so pleased him for the same: first that this Bill destroyes the writt whereby they are made two houses of Parliament the King in the writt to the Lords being *Cum prelatis colloquium habere*; secondly they have bene in all Parliaments since we had any, and voted, but in such wherein they themselves were concerned: And there have bene Bishops here sithence we were Christians, and the fundamentall Law of the Kingdome approves of them: if any of them were conceived offensive; they were left to justice, and his Majestie would put in inoffensive men in their places: but sithence his Majestie hath passed the Bill for taking away their votes in Parliament, it is a Law that binds us so farr.

Upon the whole matter the Law hath notably determined that Bills agreed by both houses, pretended to be for the publique good, are to be judged by the King, for in all Kings reigns Bills have been preferred by both houses, which allwayes are pretended to be for the publique good, and many times are not, and were rejected with *Roy s'avisera* or *Roy ne vult*.

This Parliament beganne the third of November 1640 before that time in all the Kings reigne no armed power did force any of the people to do any thing against the law: what was done, was by his Judges, officers Referees and Ministers from that time untill the tenth of January 1641 (when the King went from London to avoyde the danger of frequent tumults, being a yeare and three months, Privy Councillors and all his Justices and Ministers.



ministers were left to the Justice of the law, whom wanted no time to punish punishable men.

The Sphere of the house of Commons is to represent the grievances of the Countrey, to grant aydes for the King upon all the occasions extraordinary, to assent to the making or abrogating of lawes. The Orb of the house of Lords to Reforme erroneous judgements given in the Kings Bench, to redresse the delays of Courts of Justice, to receive all Petitions, to advise his Majestic with their Council, to have their votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meet.

*Lex non cogit ad impossibile.* Subjects are not to expect from Kings impossible things, so many Judges, Counsellours, Sheriffs, Justices of the peace, Commissioners, Ministers of State, that the King should over-look them all cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts: their charge is to administer the lawes in being, and not to delay, deferre or sell justice for any commandement of the King. We have Lawes enough, *legis minora bene facula sunt bene viri*, good ministers, as Judges, and officers are many times wanting, the houses propose new Lawes, or abrogation of the old; both induce novelty, the law for the reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number, of grave, learned, and prudent men, as aforesaid.

For the considerations aforesaid the Kings party adhered to him, the law of the Land is their birth-right, their guide, no offence is committed where that is not violated: they found the commission of Array warranted by the law; they found the King in this Parliament to have quitted the Ship-money, Knight-hood-money, seven Courts of Justice, consented to a triennial Parliament, sealed the Forest bounds, tooke away the Clarke of the Market of the household, trusted the house with the Navie, passed an Act not to dissolve this Parliament without the Houses assent; no people in the world so free if they could have been



content with Lawes, oathes and reason, and nothing more could or can be devised to secure us, neither hath been in any time.

Notwithstanding all this we found the King driven from London by frequent tumults, that two thirds and more of the Lords had deserted that house, for the same cause, and the greater part of the house of Commons left that house also for the same reason: new men chosen in their places, against Law, by the pretended Warrant of a counter for Seale, and in the Kings name against his consent, levying warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying taxes on the people, never heard of before in this Land, devised new oathes to oblige forces rayed by the King, not to adhere to him, but to them in this warre which they call the Negative Oath, and the Vow and Covenant.

By severall wayes never used in this Kingdome they have raised monies to foment this warre, and especially to enrich some among them; namely first Exeise, secondly Contributions, thirdly Sequestrations, fourthly Fift parts, fifthly Twentieth Parts, sixthly Mould money, seventhly Sale of Plundered goods, eighthly Loanes, ninthly Benevolences, tenthly, Collections upon their Fast-dayes, eleventhly new Inpositions upon Merchandizes, twelvethly Guards maintained upon the charge of private men, thirteenthly Fifty Subsidies at one time, fourteenthly Compositions with such as they call Delinquents, fifteenthly Sale of Bishops lands, &c.

From the Kings party meanes of subsistence are taken; before any indictment, their Lands seized, their goods taken, the Law allows a Traytor or Fellon attainted, *Necessaria sibi & familie sua in vita & convectione*, where is the Covenant? where is the Petition of right? where is the liberty of the subject?

First, We have ayded the King in this warre contrary to the negative oath and other votes, Our warrant is the twenty fifth of Edward the third, the second Chapter, and the said resolutions of all the Judges.

Secondly,

1 R. 3. cap. 3.

Bract. li. 3. c. 8.

Stanford. 192.

Sir Ger. Fleet-

woods Calc. 8.

pars Cook 7. H.

last lease.

Secondly, Wee have maintained the Commission of Array by the Kings Command, contrary to their votes: We are warranted by the statute of the fifth of *Henry* the fourth, and the judgement of *Sir Edward Coke*, the Oracle of the Law as they call him.

Thirdly, We maintained Arch-Bishops and Bishops, whom they would suppress. Our warrant is *Magna Charta*, and many statutes more.

Fourthly, we have maintained the booke of Common prayer, they suppress it, Our warrant is five acts of Parliament in *Edward* the sixth and *Queen Elizabeth* time, 3. *Pet. ch. 35. Elizabeth inter placita Corona in Banco Regis*, New booke of Entries, fol. 25 2. *Perry*, for publishing two scandalous Libels against the Church government, was indicted, arraigned, attainted, and executed at Tyburne.

Fifthly, We maintained the Militia of the Kingdome to belong to the King, they the contrary, Our warrant is the statute of the seventh of *Edward* the first, and many statutes since, the practise of all times, and the custome of the Realm.

Sixthly, We maintained the countersitting of the great Seale to be high Treason, and so of the usurpation of the Kings Ports, Ports, Shipping, Castles and his Revenue, and the Coyning of money, against them; We have our warrant by the said statute of the twenty fifth of *Edward* the third, Chapter the second, and divers others since, and the practise of all times.

Seventhly, We maintain that the King is the only supreme governour in all causes. They, that his Majesty is to be governed by them, Our warrant is the statutes of the first of *Q. Elizabeth*, Chapter the first, and the fifth of *Q. Elizabeth* the first.

Eightly, Wee maintaine that the King is King by an inherent birth-right, by nature, by God's law, and by the law of the Land, They say his Kingly right is an office, and so is lost. Our warrant is the statute of the first of King *William*, Chapter the first. And the resolution of all the Judges of *England* in *Calvin's case*.

9. Ed. 4. fol. 4.

Ninthly We maintain that the policick capacity is not to be severed from the naturall. They hold the contrary. Our warrant is two Statutes, viz. *William Hugonis* in *Edward* the second time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to posterity, that it is damnable, detestable and execrable Treason, *Calvins* case *part* 7.

*fol. 11.*

Tenthly we maintain that who aids the King at home or abroad ought not to be molested or questioned for the same, they hold and practise the contrary, our warrant is the Statute of the eleventh of *Henry* the seventh. Chapter the first.

Eleventhly We maintain that the King hath power to disassent to any Bill agreed by the two Houses; which they deny. Our warrant is the Statute of the second of *Henry* the six, and the practise of all times, the first of King *Charles*, Chapter the seventh the first of King *James* Chapter the first.

Twelfthly We maintain that Parliaments ought to be holden in a grave and peaceable manner, without tumults, They allowed multitudes of the meanest sort of people to come to *Westminster* to cry for Justice when they could not have their will, and keep guards of armed men to wait upon them. Our warrant is the Statute of the seventh of *Edward* the second and their Oracle.

Thirteenthly We maintain that there is no State within this Kingdome but the Kings Majesty, and that to adhere to any other State within this Kingdome is high treason, our warrant is the Statute of the third of King *James* Chapter the fourth, and the twenty third of Queen *Elizabeth* Chapter the first.

Fourteenthly. We maintain that to levy a waire to remove Councillours, to alter religion, or any Law established is high Treason, They hold the contrary. Our warrant is the resolutions of all the judges of *England* in Queen *Elizabeth* time, and their oracle agrees with the same.

Fifteenthly We maintain that no man should be imprisoned, put out of his Lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the

Coll. of Ord.  
*fol. 31.*

the custome of the Realm, or by act of Parliament; They practise the contrary in London, Bristol, Kent, &c. Or warrant is *Magna Charta*, Chapter the twenty ninth, the *Petition of right* the third of King *Charles*, and divers Lawes there mentioned.

We of the Kings party, did and do detest Monopolies, and ship money, and all the grievances of the people as much as any men living; we do well know that our estates, lives and fortunes are preserved by the Lawes, and that the King is bound by his Lawes, we love Parliaments, if the Kings, Judges, Counsell or Ministers have done amisse, they had from the third of *November* 1640 to the tenth of *January* 1641 time to punish them, being all left to Justice where is the Kings fault?

The law saith the King can do no wrong, that he is *medicus Regni, pater patriæ, sponsus regni qui per anulum* is espoused to his Realm at his Coronation; The King is Gods Lieutnant, and is not able to do an unjust thing, these are the words of the Law.

11 pars Cooks  
Reports Mag-  
dalen Colledge  
Calc.

One great matter is pretended that the people are not sure to enjoy the acts passed this Parliament; A succeeding Parliament may repeal them; The objection is very weak, a Parliament succeeding to that may repeal that repealing Parliament. That feare is endlesse and remediesse, for it is the essence of Parliaments being compleat and as they ought to be, of head, and all the Members, to have power over Parliaments before; Parliaments are as the time are; if a turbulent faction prevails the Parliaments are wicked as appears by the examples recited before of extreme wicked Parliaments: if the times be sober and modest, prudent and not biased, the Parliaments are right good, and honourable, and they are good medicines and salves, but in this Parliament *excesse medicina modum*.

In this cause and warre between the Kings Majesty, and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them but the lawes? What means could they use to discern what to follow, what to avoid but the Lawes? The King declares it treason to adhere to the Houses in this

warre : The Houses declare it Treason to adhere to the King in this Warre. The Subjects for a great and considerable part of them (treason being such a crime as forfeits life and estate, also renders a mans posterity base beggerly and infamous) looke upon the Lawes, and find the letter of the law requires them to assist the King, as before is manifested, was ever subject criminally punished in any age or nation for his pursuit of what the letter of the Law commands ?

The Subjects of the kingdome find the distinction and interpretation now put upon the Lawes of *Abstractum & Concretum*. Power and Person, body politique, and naturall, Personall presence and virtuell, to have beene condemned by the law : And so the Kings party hath both the letter of the law and the interpretation of the letter cleared to their judgements, whereby they might evidently perceive what side to adhere to, what satisfaction could modest peaceable and loyall men more desire ?

Coll of Ordinances 777.

5 Edw. cap. 1.  
1 Edw. cap. 1.

*A verbo legis in criminibus & penis non est recedendum*, hath been an approved maxime of law in all ages, and times. If the King be King and remain in his Kingly office (as they call it) then all the said lawes are against them without colour : they say the said lawes relate to him in his Office, they cannot say otherwise. Commissions and pardon in the Kings name, and the person of the King and his body politique cannot. nor ought to be severed as hath beene before declared : And the members of both houses have sworn constantly in this Parliament that the King is the only supreme Governour in all causes over all persons at this present time.

For that of verball or personall commands of the King which is objected, We affirme few things to be subject thereto by the law : But his Majesties Command under his great Seale, which in this warre hath beene used by the Kings command for his Commission to leavy and array men, that is no personall command (which the law in some cases disallowes) but that is such a command, so made, as all men hold their lands by, who hold by Patents ; All corporations have their Charters which hold by

by Charters, and all Judges and officers their places and callings.

It is objected the King cannot suppress his Courts of Justice, and that this warre tended to their suppression.

The answer is the King cannot nor ought to suppress Justice or his Courts of Justice, nor ever did: But Courts of Justice by *abuser or non user* cease to be courts of Justice; when Judges are made and proceedings in those courts holden by others then Judges made by the King, and against his command under the great Seale, and his Majestie is not obeyed, but the votes of the houses, they cease to be the Kings Courts and are become the Courts of the houses, and his Judges breaking that condition in law, of trust and loyalty, implied in their Patents, are no longer his Judges; they obey and exercise their places by vertue of writts and processses under a counterfet Seale. The King only can make Judges, the twenty seventh of *Henry* the eighth, Chapter the twenty fourth, *Iustices of the peace, &c.* twenty eighth of *Henry* the eighth *Dier* the eleventh, the Kings Patent makes Judges: The cheefe Justice of the Kings Bench is made by the Kings writ only of all the judges.

The great Seale is the key of the kingdome, and meet it is that the King should have the key of his kingdome about him; 2. pars *infra* 552. which confutes their saying that the King got the Seale away surreptitiously.

The King, and he only, may remove his Courts from Westminster into some other place, at *Yorke* the Termes were kept for seven yeares, in *Edward* the first's time: but for the Court of Common pleas, the place must be certaine; for the Kings Bench and Chancery, the King by the law may command them to attend his person alwayes if it seeme so meete unto him: but the removing of the Common pleas must be to a place certaine and so notified to the people.

All the bookes of law in all times agree, that the King may grant consufance of all Pleas at his pleasure within any Countie or precinct to be holden there only, and remove the Courts from Westminster

Ob.

Sol.

7 pars

The

Earle of West-

merlands Case.

1 Eliz. Dier.

165. 7. pars

Cooke.

The case of  
discontinuance  
of Process.

*Articuli Super  
chartas cap. 5.*

*Britton fol. 23.*

*34. Affis. pl. 24.*

*22. Ed. 4. Fitz.*

*jurisdiction last*

*place.*



6 H. 7. 9. Westminster to some other place ( for the Common Pleas, the  
 6 Eliz. 326. *Dier.* place must be certaine, and so notified to the people ) and ad-  
 journe the termes as he sees cause. All which the two houses  
 have violated. *Plebs sine lege ruo.*

Some seeming objections of Master *Prins's*, scattered in di-  
 vers books answered, and the truth thereby more fully cleared.

1 Ob.

The first of *Henry* the fourth reviveth the statute of the eleventh  
 of *Richard* second, and repeales to the twelfth of *Richard* the  
 second, whereby certaine persons were declared traitors to the  
 King and Kingdome, being of the Kings party.

Sol.

True, but note, the eleventh of *Richard* the second. A Parlia-  
 ment beset with 40000 men, and the King assents to it, in an Act,  
 and besides the first of *Henry* the fourth declares, that, the rea-  
 sons mentioned in the act of the eleventh of *Richard* the second,  
 being but against a few private men shall not be drawn into ex-  
 ample, and that no Treason should be but such as the twenty fift  
 of *Edward* the third declares. All these are Acts passed by the  
 King and the three estates, not to be drawne into example in a  
 tumultuous time, by a besieged Parliament, with an Army, and  
 the confirmer of *Henry* the fourth being an usurper makes that  
 Act of the first of *Henry* the fourth to secure himselfe. Also what  
 is this in the votes of the two houses only at this time.

9 Ed. 4. fol. 80.

2 Ob.

The Court of Parliament is above the King, for it  
 may avoid his Charters Commissions, &c. granted against the  
 law.

Sol.

And the Law is above the King.

By the same reason you may say that the Courts of Chan-  
 cery, or any of the Courts of Law at *Westminster* are above the  
 King, for they make of no effect the Kings Charters, which are  
 passed against the Law : and the King is Subject to Law, and  
 sworne to maintaine it. Again, it is no Parliament without the  
 King, and the King is the head thereof, he is *principium Caput &  
 finis* of a Parliament, as *Medas tenenda Parliament.* hath it, and  
 two houses only, want *principium Caput & finis* of a Parliament  
 and

and it is a sorry Parliament that wants all these. And therefore to say that Parliaments are above the King, is to say that the King is above himselfe.

The Parliament can enlarge the Kings prerogative, therefore it is above him.

If the King assent, otherwise not; and then it is an Act of Parliament, and otherwise no Act.

*Bracton* saith, God, the Law, and the Kings Court, (*viz.*) his Earles and Barons are above the King, (*viz.*) in Parliament, as Master *Prynne* expounds it.

Where is then the House of Commons? Indeed, take God, the Law, and Earles and Barons together it is true; but to as-  
firm that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferior member is above the head, is hard to conceive: besides, that position destroyes all *M. Prynne's* discourse, who attributes so much to the House of Commons.

The King is but one of the three estates of Parliament, and two are greater than one; therefore above.

The Legs, Armes, and Trunke of the Body are greater then the Head, and yet not above; nor with life, without it: the argument holds for quantitie, but not for qualitie; and in truth, the King is none of the three estates, but above them all; the three estates are, the Lords Spirituall, the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chapter of Parliaments, fol. r.

In Corporations, the greater number of voyces make all the Acts of the Corporation valid; therefore so in Parliament.

By this reason the Kings assent is needlesse, and to no end, and all the Acts of Parliament formerly mentioned, and Law-Bookes have quite mistaken the matter, which with unanimous voyce requires the Kings assent as necessarie: besides, the Corporations are so constituted by the Kings Charters, that the greater number of Votes shall make their Acts valid.

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not ther.

In his other Courts of Justice he hath no voyce, he is none

of the Judges, in the Parliament he hath; if his presence be not necessarie, his voyce is not, nor his assent.

8 Ob.  
Soverain  
power of  
Parlia-  
ments, 66,

The originall prime legislative power of making Lawes, to bind the Subjects and their posteritie, rests not in the King, but in the Kingdome and Parliament, which represents it.

47.

Sol.

Master *Prynne* in the same lease affirmes, and truly, that the Kings assent is generally requisite to passe Lawes and ratifie them; the King is the head of the Kingdome and Parliament, how then can a Body act without a Head?

9 Ob.

A *major* part of a Corporation binds, therefore the *major* part in Parliament, and so of by-Lawes.

Sol.

The Corporation is so bound, either by the Kings Charters, or by prescription, which sometimes had the Kings concessions; but prescription, and Law, and practise, alwayes left the King a negative voyce.

10 Ob.

The King cannot alter the Bills presented to him by both Houses, 80.

Sol.

True; but the King may refuse them.

11 Ob.

Acts of Parliament and Lawes minitred in the Reignes of Usurpers, bind rightfull Kings, 80.

Sol.

What is this to prove the two Houses power only, which is the question? A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytors and Rebels to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper. But here is a King still in both cases, and the proceedings at Law holds; the Judges having their Patents from the being Kings, in the reignes of Kings, *de facto* or *de jure*, for all Kings are bound and sworn to observe the Lawes.

9. Ed. 4. 12

11 Ob.

A King dies without Heire is an infant, *non compos mentis*, &c. the two Houses may establish Lawes, 80.

Sol.

There is no *Inter-regnum* in England, as appears by all our Bookes of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his poliugue capacite, which cannot die at all. The Protector, assisted

assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Masters of the Chancerie, hath in the Kings behalfe, and ever had, a negative Voyce: but what is this to the present question? Wee have a King of full age, of great wisdom and judgement; the power of the two Houses in such a case to be over the King, cannot be shewne.

The King cannot dissent to publique and necessarie Bills for the common good, &c. 13

Nor ever did good King: but who shall be judge, whether they be publique and necessarie? The *major* part in either of the Houses, for passing of Bills so pretended, may be but one or two voyces, or very few, and perhaps of no judicious men: is it not then fitter or more agreeable to reason, that his Majesty and Councell of State, his twelve Judges, his Sergeants, Attorney and Solicitor, twelve Masters of the Chancerie, should judge of the conveniencie and benefit of such Bills for the publique good, rather then a *minor*, (of which sort there may be in the Houses) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all? let reason determine. 14

The Kings of England have beene elective; and the King by his Coronation-Oath is bound to maintaine *justas leges & consuetudines quas vulgus elegerit*, &c. 14 Ob.

*Populo* hath beene in the kingdome, and therefore to continue it still, will not be taken for a good argument; when things are settled for many ages, to look back to times of confusion is to destroy all repose: The Act of Parliament, of the first of K. James, Chapter the first, and all our extant Lawes say, that the Kings Office is an heritage inherent in the blood of our Kings, and their birth-right. 15

And usurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appears by the Acts of Parliament declaring them so: And by all our Law-Bookes and the fundamentall constitution of the Land, Regall power is hereditarie and not elective. Ed. 4. c. 1.

For the words (*vulgus elegerit*) if *vulgus* be applyed to the House 1 H. 7.

House of Commons; they of themselves can make no Lawes. The Peeres were never yet tearmed *vulgar*; but allowing they be so called, the Lawes to be made must be just; and who is fit to judge thereof, is before made evident.

25 Ob. Customes cannot erre to future time, and both are compiled, Lawes and Customes.

Princes have beene deposed, and may be by the two Houses, &c.

Sol. The deposers were Traytors, as appeares by the resolution of all the Judges of *England*; *Coke*, Chap. Treason, in the second part of the Institutes. And never was King deposed but in tumultuous and mad times, and by the power of Armies; and they who were to be the succeeding Kings in the head of them, as *Edward* the third and *Henry* the fourth.

26 Ob. The appeale to the Parliament for errors in judgements in all Courts, is frequent, &c.

Sol. This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith: and in the House of Peeres, if a Writ of Error be brought, to reverse any judgement, there is first a petition to the King for the allowance thereof; and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancerie assist there, by whose advice erroneous judgements are redressed.

27 Ob. The Parliaments have determined of the rights of Kings, as in *Henry* the sixts time, and others; and Parliaments have bound the succession of Kings, as appeares by the Statute of the thirteenth of *Q. Elizab.* Chapter the first: and the descent of the Crowne is guided rather by a Parliamentarie Title then by Common Law, &c.

Sol. If this Objection be true, that the Title to the Crowne is by Parliament, then we had no Usurpers, for they all had Parliaments to back them, yea, *Richard* the third, that Monster. All our Bookes of Law say they have the Crowne by descent, and the Statutes of the Land declare, that they have the same by inherent birth-right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter, was made to secure *Q. Elizabeth* against

against the Qu, of Scots, then in the Kingdome, clayming the Crowne of England, and having many adherents. And that Statute to that end affirmes no such power in the two Houses (which is the Question) but in Q. Elizabeth, and the two Houses, which makes against the pretence of this time.

Master Prynne, fol. 104. of his booke, intituled, *The Parliaments supreme power, &c.* Objecting the Statute of the first of Queen Elizabeth, and his own Oath, that the king is the onely supreme Governour of this Realme; Answers, The Parliament is the supreme power, and the king supreme Governour: And yet there he allowes him a Negative Voyce; and fol. 107. confesseth that Acts of Parliament translated the Crowne from the right Heires at Common-law, to others who had no good Title; then the Parliamentary Title makes not the king, so powerfull is truth, that it escapes from a man unawares: To make a distinction betweene Supreme Governour, and Supreme power, is very strange, for who can Govern without power?

The king assembles the Parliament by His Writ, adjourns, prorogues, and dissolves the Parliament, by the law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the kings command. Where is the supreme Power.

The king by his Oath, is bound to deny no man right much lesse the Parliament, to agree to all just and necessary lawes, proposed by them to the king. This is the substance of the discourse against the kings Negative Voyce.

The king is so bound as is set downe in the Objection, but who shall judge whether the Bill proposed be just and necessary: For all that they doe propose are so pretended and carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly as hath been shewn, the king, his Councell of State, his Judges, Sargeants, Attorney, Solicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more.

Mr. Pryn fol. 45. In his book of the Parliaments interest to nominate Privie-Councillors, calleth the opinion of the  
Spencers,



Calvins  
case, 7.  
pars, fol.  
11.

*Spencers*, to divide the Person of the King from his Crowne, a strange opinion, and cites *Calvins* Case, but leaves out the conclusions therein mentioned, fol. 11. Master *Prynne* saith there, But let this opinion bee what it will: without the Kings Grace and Pardon it will goe very far, and two Acts of Parliament there mentioned are beyond an opinion. And in his Book of the opening of the Great Seale, fol. 17. The Parliament hath no jurisdiction to use the Great Seale for Pardons Generall or Particular. Where is the Supreme power?

19. Ob.

Mr. *Prynne* (opening of the Seale) pag. 19. saith, The Noblemen and State, the day after the Funerall of King *Henry* the third (King *Edward* the first his sonne being in the Holy Land) made a new Great Seale, and Keepers of the same: And in *Henry* the sixts time, in the first yeere of his Reigne, the like was done in Parliament.

Sol.

*A facto, ad jus*, is no good Argument, for that in *Edward* the firsts time, it was no Parliament, for King *Henry* the 3<sup>d</sup> was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of *Edward* the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under that New Seale, it was so suddenly done after *Henry* the thirds death, King *Edward* the first being then in the Holy Land, it was the first yeere of his Reigne, and no Parliament was held that yeere, nor the second yeere of his Reigne: The first Parliament that was in his Reigne, was in the third yeere of his Reigne, as appears by the Printed Acts. Also the making of that Seale was by some Lords then present, What hand had the Commons in it? Concerning the Seale made in *Henry* the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making of that Seal was by the Protector in the Kings name; and that Protector, *Humphrey* Duke of *Gloucester*, as Protector, in the kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of *Henry* the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector,

ector, to summon that Parliament, *Argum.* *ibid.* fol. 29. But the new counterset Seal was made when the King was at Oxford, in his own kingdome, and not in the holy Land.

Mr. *Bryant* in his Book of the two Houses power to impose Taxes, restraines Malignants against any *Habeas Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and fol. 15. *ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is Cause.

This Argument supposeth that they have the kings power, which hath appeared formerly they have not. But suppose they had, *Magna Charta* containes many morall Lawes, which by the Law of the Land a Parliament cannot alter, 21 *H. 7. 2. D. & Student, 2. Dialogue.* For example it saith cap 18 Justice shall not be sold, delayed, nor denyed to any man: but by this Argument the Parliament may make law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have, doth now by the Propositions sent to *Newcastle* to His Majesty, appeare, whereby they would have him divest himselfe, and settle in them all his kingly power by Sea and land, and of themselves to have power, without him, to lay up on the people of this land what taxes they think meet, to abolish the Common prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to flatter this course, and being chased away with Tumults from *London*, leaves the Houses for these Reasons: (*viz.*)

First, because to alter the Government for Religion, is against the kings Oath.

Secondly, against their Oathes. For every of them hath sworne in this Parliament, That His Majesty is the only supreme Governour in all Causes Ecclesiasticall and over all persons.

Thirdly, This course is against *Magna Charta*, the 1. chap. and the last: *Salvo suis Episcopis omnes libertates suas*, Confirmed by thirty two Acts of Parliament; and in the two and fortieth

20. Ob.

Sol.

fortieth of *Edward* the third, in the first Chapter enacts, If any Statute be made to the contrary, it shall be holden for none, and so it is for Judgements at Law, in the 25. of *Edward* the 1. chap. 2. The Great Charter is declared to bee the Common Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of Bishops, which is as ancient as Christianity in this Land, and the Book of Common Prayer setled by five Acts of Parliament, and compiled by the Reformers and Martyrs, and practised in the time of foure Princes.

Fifthly, these Propositions taking away from His Majesty all his power by land and Sea, rob him of that which all his Ancestours, kings of this Realme, have enjoyed. That Enjoyment and Usage makes the Law, and a Right, by the same to His Majesty. They are against their owne Protestation made this Parliament, (*viz.*) to maintaine His Royall person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish His Just Power and Greatnesse.

For these Reasons His Majesty hath left them, and as is beleaved, will refuse to agree to the said Propositions, as by the Fundamentall Law of the land hee may (having a Negative Voyce) to any Bills proposed.

The result of all is upon the whole matter: That the king, thus leaving of the Houses, and his Denyall to passe the said Propositions, are so farre from making him a Tyrant, or not in a condition to Govern, at the present; That thereby hee is rendred a Just, Magnanimous, and pious Prince: so that by this it appeares clearly to whom the Miseries of these Times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall pardon.

God save the KING.

DAVID JENKINS, now Prisoner in the Tower.

28. Aprilis, 1647.

THE  
CORDIALL

OF

*K with No 1*

JUDGE JENKINS,

For the good People of LONDON;  
In Reply to a thing, called,

AN

Answer to the Poysonous Seditious  
Paper of Mr David Jenkins; By H.P. Bar-  
rester of *Lincolns-Inne*.



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Printed in the Year, 1647.

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OF THE

Printed in the Year 1845



## The Cordial of *Fudge Jenkings* for the good People of London, &c.

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**A**fter the said Mr *H.P.* hath made a recitall of the Heads of my *Vindication*, hee deduceth his Answer unto these eight Particulars, which follow *verbatimum*.

### I.

*It cannot be denied, but the Parliament sits by the Kings Writ, nay if Statute Law be greater then the Kings Writ, it cannot be denied but the Parliament sits or ought to sit by something greater then the Kings Writ; And, if it be confessed that the Parliament sits by the Kings Writ, but does not Act by the Kings Writ, then it must follow that the Parliament is a void vaine Court, and sits to no purpose; nay it must also follow, that the Parliament is of lesse authority, and of lesse use then any other inferiour Court; forasmuch as it is not in the Kings power to controule other Courts, or to prevent them from sitting or Acting.*

### 2.

*This is a grosse non sequitur, the Kings power is in himself; Ergo, it is not derived to, nor does reside virtually in the Parliament. For the light of the Sun remains imbodyed, and unexhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the ayre; and who sees not that the King without emptying himselfe, gives commissions daily of Oyer and Terminer to others, which yet he himselfe can neither frustrate nor elude? but for my part I conceive it is a great error to inferre that the Parliament has onely the Kings power, because it has the Kings power in it: for it seemes to me, that the*



Parliament does both sit and act by concurrent power, devolved both from the King and Kingdom; And this in some things is more obvious and apparent then in others. For by what power does the Parliament grant Subsidies to the King? if only by the power which the King gives, then the King may take Subsidies without any grant from the Parliament: and if it be so by a power which the people give to the Parliament; Then it will follow the Parliament has a power given both by King and Kingdome.

3.

The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer; for Subjects may humbly petition for that which is their strict right and property. Nay, it may sometimes beseech a superiour to preferre suite to an inferiour for matters in themselves due. God himselfe has not utterly disdained to beseech his own miserable impious unworthy creatures: besides, tis not our Tenet, that the King has no power, because he has not all power, nor that the King cannot at all promote our happinesse, because hee has no just claime to procure our ruine.

4.

We affirm not, that the Kings power is separated from his Person, so as the two Spencers affirmed, neither doe we frame conclusions out of that separation, as the two Spencers did, either that the King may be removed for misdemeanours, or reformed per aspectu; or that the Subject is bound to govern in ayde of him; we only say, that his power is distinguishable from his person, and when he himself makes a distinction betwixt them, commanding one thing by his Legall Writs, Courts, and Officers, and commanding another thing extrajudicially by word of mouth, Letters, or Ministers, we are to obey his power rather then his person.

5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him *quarto modo*: For if the King pardon him which hath murdered my soune, his pardon shall not cut me off from my appeale; and tis more unreasonable, that the Kings pardon should make a whole State, which hath suffered, remedlesse, then any private man. So if the King should deny indemnity to those which in the furie of Warre have done things unjustifiable by the Lawes of Peace, and thereby keep the wounds of the State from being bound up, tis equitabie that an Act of Indemnity

demnity should be made forcible another way. And if this will not hold, yet this is no good consequence, the King is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies, therefore it hath no power in other matters.

## 6.

The Parliament hath declared the King to be in no condition to govern: but this must not be interpreted rigidly, and without distinction; for if the King with his sword drawn in his hand, and pursuing the Parliament and their adherents as Rebels, be not fit for all Acts of Government, yet 'tis not hereby insinuated that he is divested of the habit or right of governing: If he be unqualified now, he is not unqualified for the future; if he may not do things destructive to the Parliament, he is not barred from returning to the Parliament, or doing justice to the Parliament. This is a frivolous cavil, and subterfuge.

## 7.

We swear, that the King is our supreme Governour over all persons, and in all Cases; but we do not swear that he is above all Law, nor above the safety of his people, which is the end of the Law, and indeed Paramount to the Law it self. If he be above all Law, or liable to no restraint of our Law, then we are no freer then the French or the Turks; and if he be above the prime end of Law, common safety, then we are not so free as the French or Turks: For if the totall subversion of the French or the Turk were attempted, they might by Gods Law, imprinted in the Book of Nature, justifie a self-defence; but we must remedilessly perish, when the King pleases to command our throats. Besides, how achieved the King of England such a Supremacie above all Law and the community it selfe, for whose behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend too, then to what purpose serve our Laws, nay, to what purpose serve the Laws of other Countries? for by this generall donation, all Nations are condemned to all servitude as well as we. If the Law of this Land be appealed to, what Books hath Mr Ienkins read, where hath he found out that Lex Regia, whereby the people of England have given away from themselves all right in themselves? Some of our Books tell us, that we are more free then the French; that the King cannot oppresse us in our

our persons, or estates, by imprisonment, denying justice, or laying Taxes without our consents: other Books tell us, that the safety of the people is the supreme Law, and that the King hath both God and the Law for his Superiour: But all this is nothing to learned Mr Jenkins.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent: yet this is still to be denyed, that therefore without this assent particularly exprest, the two Houses can doe nothing, nor have any virtuall power at all, no, not to examine Mr Jenkins, nor to doe any other thing of like nature, though in order to publick justice and safety. I have done, and wish Mr Jenkins would call in and lick up againe his black infamons execrable reproaches, so filthily vomited out against the Parliament.

### To the first.

I Was examined by a Committee appointed by the House of Commons: I say and said that the House of Commons have no power to examine me, for that it is no Court; every Court hath power to examine upon Oath; this power the House of Commons never claimed; The Court of Pie-powders, Court-Baron, Hundred Court, County Court, and every other Court of Record, or not of Record, hath power to examine upon oath; and an examination without Oath is a communication only; examination in Law is upon Oath.

There is no Court without a power of tryall; the House of Commons have no power to try any offence, nor ever practised it by Bill, Inditement, Information, Plaint or Original, to deduce it to tryal, nor to try it by Verdict, Demurrer or Examination of Witnesses upon Oath, without which there can be no condemnation or judgement; and that which can attaine to no reasonable end, the Law rejects as a thing *inutile* and uselesse; *Sapiens incipit a fine.*

The Writ Whereby they are called gives them power *Ad faciendum & consentiendum*; to what? to such things *Que ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons

5 H. 4. c. 3.

3 H. 6. 46.

19 H. 6. 43.

35 H. 6. 50.

Sir Anthony  
Maynes case,  
Cook 5. pars.  
Reports, Lit.  
2. lib. 3. c. 1.  
194. 6. H. 4. 1.

4 pars. instit.  
fol. 4. & p.

Commons ; that *consilium* which that Writ intends, is cleared partly by the Writ for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peeres of the Kingdome, for and touching the great concernments of the Common-wealth (for the King never sits in the House of Commons ; ) and this also is made evident by the Writs to the Prelates, Peeres, Iudges, and to his Councell at Law ; the words in their Writ are, *To appear and attend the Parliament, consilium impensuri*, the one doth *consulere*, the other *facere & consentire*.

The House of Lords, where the King sits in person, assisted by his Lords, Judges, Serjeants, Attorney, Sollicitor, Masters of the Chancery, is a Court of Record to many purposes, set down in the Books of Law and the Statutes of the Land, and that Court is only in the House of Lords, where the Kings sits.

A Court must either be by the Kings Patent, Statute Law, or by the Common Law, which is common and constant usage; the House of Commons hath no Patent to be a Court, nor Statute Law to be a Court, nor common usage; they have no Journall Book but since E. 6. time : was there ever Fine by the House of Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot doe the lesse, cannot doe the greater.

It is ordained, that no man shall be imprisoned or put out of his Franchise by the King or his Councell, but upon Indictment or presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terra* the Law of the land mentioned in *Magna Charta*; cap. 29. expounded, and the said *Magna Charta*, and *Charta d. Foresta*, are declared by the Stat. of 25. E. 1. c. 1. to be the Common Law of the Land. All Iudges and Commissioners are to proceed, *Secundum legem & consuetudinem Regni Anglia*, as appeares by all proceedings in all Courts, and by all Commissions : and therefore the House of Commons by themselves, proceeding not by Indictment, Presentment, or Originall Writ, have no power to imprison men, or put them out of their Franchise.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I have only in my Paper delivered to Mr Corbet, applyed my selfe to that Commis-

12. H. 7. 20.  
Princes case,  
8 Pars, Cook.  
1 Pars, Infit.  
p. 119.  
14 H. 8. 2.  
Dier, 38, H. 8.  
60.  
1 Pars, Infit.  
p. 19. b.

4 Pa. Infit.  
ca. Parl.

Fitzh. Nat.  
Br. 70.  
Fitzh. Nat.  
Br. 13.  
12. H. 4. 23.  
34. H. 6. 49.

4 Pars, Infit.  
Tit. Parliament.  
pag. 23.

tee, that they had no power to examine me, but I never thought, said, or wrote, that the Parliament had no power to examine me: the Law and custome of this Land is, that a Parliament hath power over my life, liberty, lands and goods, and over every other subject, but the House of Commons of it selfe hath no such power.

For the Lord *Cook's* relation, that the House of Commons have imposed Fines, and imprisoned men in *Queen Elizabeth* time, and since; Few facts of late time never questioned, make no legall power nor Court; *a facto ad jus* is no good argument; for the words of the Statute of 6. H. 8. c. 16. that a licence to depart from the House of Commons for any Member thereof is to be entred of Record in the Book of the Clark of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Record.

For first, that Law of 6. H. 8. c. 26. handles no such question, as that, whether the House of Commons be a Court; it is a maxime in all Lawes, *Lex aliud transtans nil probat*, the word (*Record*) there mentioned, is only a memoriall of what was done and entred in a Book: A Plaint removed out of the County-Court to the Court of the Common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the County-Court is no Court of Record; and so for ancient Demesne, in a Writ of false judgement, the words are *Recordari facias loquelam, &c.* and yet the Court of ancient Demesne is no Court of Record; and so of a Court Baron, the Law and custome of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custome.

Let any man shew me, that the Court of Lords or the House of Commons in any age hath made any man a Delinquent (*Rege dissensiens*) the King contradicting it under his Great Seale. Sir *Giles Mompesson*, *Michell*, and others of late were condemned by the prosecution of the House of Commons in King *James* his time; did King *James* ever contradict it? And so of ancient times, where the House of Peeres condemned the Lord *Latimer* in 50. E. 3. the Kings pardon freed him: which shewes cleerly, that the Kings expresse or implied assent must of necessity be had to make a Delinquent.

The Gentleman saith, *That the Parliament sit, or ought*

to sit by something greater than the Kings Writ, &c.

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in person, or by a Guardian of England by patent under the Kings Great Seal, the King being *in remota*, or by Commission under the Great Seal to certaine Lords representing the Kings person, and it hath been thus in all Ages unto this Session of Parliament, wherein his Majesty hath been pressed, and hath passed two Acts of Parliament, one for a Tricennall Parliament, and another for a perpetuall, if the Houses please, to satisfie their desires; how these two Acts agree one with another, and with the Statute in *E.* the third time, where Parliaments are ordained to be holden every year, and what mischiefs to the people of this Land such length of Parliaments will produce by protections and privileges to free them and their meniall servants from all debts during their lives, if they please to continue it so long, and how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certain years, and many other inconveniences of greater importance, is easie to understand.

4 Pars, Instit.  
pag. 4. & 6.

4 E. 3. c. 14.  
36 E. 3. c. 10.  
21. Jac. the Act  
of Limitation  
of Actions,  
cap. 16.

How can any man affirm, that the two Houses doe act now by the Kings Writ, which relates to Counsell and Treaty with the King, concerning the King, the defence of his Kingdome, and of the Church of England, these are the three points which it tends to, as appears by the Writ. They keep their King prisoner at *Holby*, and will not suffer him to consult and treat with them. They have made a Vow and Covenant to assist the Forces raised and continued by both Houses against the Forces raised by the King without their consent, and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the Kings Kingdome or their Kingdome?

4 Pars, Instit.  
p. 14.

Vow and Co-  
venant, p. 11.]

When by their Solemn League and Covenant they extirpate Bishops, Deanes and Chapters root and branch, is this to defend the Church of England? (that Church must necessarily be meant, that was the Church of England when the said Writ bore test) they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

3 Pars, Cooks  
Deane and  
Chapter of  
Norwich,



The Gentleman saith, *The King cannot controule other Courts of Justice, or prevent them from sitting or acting, and therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Iustice, to administer common right unto all men, according to the fixed Lawes. The Houses make no Court without the King, they are no body corporate without the King, nor Parliament without the King, they all make one corporate body, one Court called the Parliament, whereof the King is the head, and the Court is in the Lords House, where the King is present: and as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all, and they themselves by levying war against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroging this Parliament of no effect, by the said Acts of their own; they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat, and reason with them; whereby he may discern what Bills are fit to passe, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

14 H. 8. 3.  
36 H. 8. Dier.  
60.

4 Pars, Instit.  
pg. 1.

27 H. 8. c. 24.  
28 H. 8. 11.  
Dier.

2 R. 3. 11.

For the ordinary Courts at *Westminster*, the Iudges in all those Courts are Iudges by the Kings Patent or Writ, otherwise they are no Iudges: the Houses can make no Iudges, they are no Iudges at all who are made by them; the whole & sole power of making Iudges, belongs to the King: the King cannot controule or prevent his own Iudges from sitting or acting, but the Houses hee may, for they are not the Kings Iudges, but the Iudges of the two Houses. In his other Courts, the King commits his power to his Iudges by his Patent, and they are sworn to doe common right to all men, and the King is sworn not to let them from so doing: the King cannot judge in those Courts, nor controule; but the King is both Iudge and Controller in the Court of Parliament: *Quoad* Acts, for his assent or dissent doth give life or death to all Bills. Many Lawyers have much to answer to God, this Kingdome, and to posterity, for puzzling the poore of this Land with such Fancies, as the Gentleman who wrote the Answer to my Raper, and others have published in these Troubles, which hath been none of the least causes of the raising and continuing of them:

(9)  
them : And so I have with the first part of his Answer.

AD. 2.

For the *Non sequitur*, in the second Section of the Gent. Answer, the Antecedent and the Consequent are his own.

*Quem recitas meus est (ô Fidantine !) libellus :*

*Sed malè dum recitas incipit esse tuus.*

My words are, that the King is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King. My Paper hath no such thing, as that the Kings power cannot be derived to others, or the vertue of his power : For his power, and the vertue of his power, is in all Patents to his Iudges, in Charters to Corporations, in Commissions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him; but when they renounce that power, and claime it not from the King, and declare to the kingdome that he is not in condition to govern, and imprison him, and usurp to themselves all Royall Authority, as the two Houses now doe, no reasonable man can affirm that they act by the power of their prisoner, who hath no power to give them, that by force of Armes take all the power to themselves.

27 H. 8. c. 24.

The Gent. saith, the King grants Commissions daily of Oyer and Terminer, which he cannot frustrate nor elude. The King may revoke and discharge the Commission by his Writ, as he may remove all Iudges, and place other men in their roome; and any Kings death determines all the Iudges Patents of *Westminster* Hall, Commissions of Oyer and Terminer, &c. and so he might dissolve both Houses in all times, by his Writ under the Great Seale, untill that by this Parliament, by his own concession, the King of his goodnesse hath secluded himself; which goodnesse hath been full ill requited.

4 E. 4. 39.

5 F. 4. 4.

1 Eliz. Dyer

165.

1 Mar. Brooks  
case, 147.

The Gent. affirms, That the power the Parliament hath, is concurrent from the King and Kingdome; which, he conceives, is proved by the Grant of Subsidies to the King by the Parliament. The mistaking of this word (*Parliament*) hath been mischievous in these times to this Land, and it is affectedly mistaken, which makes the sinne the greater, for the two Houses are not the Parliament, as before is declared; and at this time so to inculcate it, when all men know, that of the 120 Peeres of the

4 Pars. Instit.  
pag 1.

Kingdome, who were Temporal Peeres before the Troubles; there are not now above 30 in the Lords House, and in the House of Commons about 200 of the principall Gent. of the Kingdome left the House, and adhered to his Majesty, who is imprisoned by them, shewes no such candor as is to be desired.

25. E. 1. confirmatio chartarum, cap. 6.  
34. E. 1. cap. 1.  
de Tallagio non concedendo,

It is true, that no Tallage can be layd upon the people of this Land, but by their consent in Parliament, as appeareth by the Lawes mentioned in the Margent; but you shall finde in Mr *Seldens* learned Book, called *Adare Clausum*, a number of Presidents in *Henry* the Thirds time for Ship-money, justly condemned this Parliament, to the which his Majesty assented; and in truth, that Ship-money was condemned before, by the said two Statutes of 25. E. 1. & 34. E. 1. de Tallagio non concedendo. *Danegelt*, *Englitery*, and many grievous burthens were laid upon the people, and born, untill that memorable Princes time. But I am of opinion, that the Common Law of the Land did alwayes restrain Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appear by *Magna Charta* the last chapter, where the Prelates, Lords, and Communalty gave the King the fifteenth part of their moveables. In truth it is no manner of consequence, because the King cannot take what he pleaseth of the subjects goods, that therefore they have a concurrent power in Parliament: there have been many Parliaments, and no Subsidies granted; Parliaments may be without Subsidies, but Subsidies cannot be without Parliaments: of ancient time Parliaments rarely granted any, unlesse it were in the time of forraine Warres; and in my time, *Qu. Elizabeth* refused a Subsidy granted in Parliament, and in the Parliamt of a *Jac.* none were granted. The Gent. should make a conscience of blinding the people with such untrue colours, to the ruine of King and people.

AD. 3.

The Gent. affirms, *That the sending Propositions to the King, and desiring his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right and property, &c.* The Propositions sent to *Newcastle*, are in print; where in the two Houses are so farre from humbly petitioning, that they stile not themselves his Majesties Subjects, as appears by the Propositions.

That they have a strict right or property to any one of these Propositions.

Propositions, is a strange assertion, every one of them being against the Lawes now in force: Have the two Houses a strict right and property, to lay upon the people what Taxes they shall judge meet? To pardon all Treasons, &c. that is one of their Propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their Propositions.

These Propositions have been Voted by both Houses, the Kings assent (the being drawn into Bills) makes them Acts of Parliament: Hath the King no right to assent or dis-assent? Was the sending but a Complement? All our Law-Books and Statutes speak otherwise. This Gent. and others, must give an account one time or other for such delusions put upon the people.

12 H. 7. 20.  
1 Jac. cap. 1.  
1 Car. cap. 7.

## AD. 4.

The Gent. saith, *They affirm not, that the Kings power is separated from his person, so as the two Spencers affirmed, &c.* His Majesties person is now at *Holnby* under their Guards; have they not severed his power from him, when by no power they have left him, he can have two of his Chaplaines, who have not taken their Covenant, to attend him for the exercise of his Conscience?

For the three Conclusions of the *Spencers*, doe not the two Houses act every of them? They say, his Majesty hath broken his Trust, touching the Government of his people: They have raised Armies to take him, they have taken him, and imprisoned him; they govern themselves; they make Lawes, impose Taxes, make Judges, Sheriffes, and take upon them *omnia insigna summæ potestatis*: Is not this to remove the King for misdemeanours, to reform *per aspertè*, to govern in aide of him; the three Conclusions of the *Spencers*? Doe they think the good people of *England* are become stupid, and will not at length see these things?

15. Ed. 2. Ex-  
ilium Hugonis  
1 E. 3. c. 2.  
Calvins case.  
7 Pars. Re-  
ports, 11.

The Gentleman saith, *They doe not separate his power from his Person, but distinguish it, &c.* His power is in his legall Writs, Courts, and Officers: when they counterfeit the Great Scale, and seale Writs with the same, make Judges themselves, Courts and Officers, by their own Ordinances against his consent, declared under his true Great Scale of *England* (not by word of mouth, letters, or ministers only) their Scale is obeyed, their own Writs, their own Judges, their own Courts, their own Officers, and not

Plowd. 4. Eliz.  
213. the Kings  
power and his  
Person are in-  
divisible.

the Kings : The time will come when such strange actions and discourfes will be lamented.

AD. 5.

The Gentleman goes on, *We take not from the King all power of pardoning Delinquents ; we only say it is not proper to him quarto modo, &c.* What doe you meane by *quarto modo*? I am fure, *Omnis Rex Anglie, folus Rex & femper Rex* can doe it, and none elfe ; read the Books of the Law to this purpofe collected by that reverend and learned Iudge *Stanford*, from all Antiquity to his time, who dyed in the laft year of King *Philip* and Queen *Maries* Reign, you fhall finde this a truth undeniable ; and this power was never questioned in any Age in any Book by any untill this time, that every thing is put to the queftion : You Gentlemen who profefle the Law, and maintaine the party againft the King, return at length, and bring not fo much fcandall upon the Law, ( which preserves all ) by publifhing fuch incredible things.

We hold only what the Law holds, the Kings Prerogative and the Subjects Liberty are determined, and bounded, and admeafured by the written Law what they are ; we doe not hold the King to have any more power, neither doth His Majefty claime any other but what the Law gives him ; the two Houfes by the Law of this Land have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting : (and the Army under Sir *Thomas Fairfax* ( howbeit but Souldiers ) doe now underftand that to be Law, and doe now evidently fee and affuredly know, that it is not an Ordinance of the two Houfes, but an act of Parliament, made by the King, Lords and Commons that will fecure them, and let this Army remember their executed fellow Souldiers, ) And the Law was always fo taken by all men untill thefe troubles, that have begot Monfters of opinions.

AD. 6.

This Gentleman fayer, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your diftinctions, I and you profefle the Law ; fhew me Law for your diftinctions, or letter, fyllable, or line, in any Age in the Books of the Law, that the King may in one time be in no condition to govern, and yet have the habit

Stanfor. Picas

99.

27 H 8.c. 24.

Dier, 163.

1 Pars, Inft. t.

pag. 344.

Plowd. 3. Eliz.

236, 237.

bit of governing, and another time he may (*viz.*) when the two Houses will suffer him : The Law saith thus, *Ubi lex non distinguit, non est distinguendum.*

He sayes, *The King is not barred from returning to His Parliament*, (as he calls the two Houses) he knowes the contrary, the whole City knowes the contrary, *Nos juris consulti sumus sacerdotes*, (as *Institian* the Emperour hath it, in the first Book of his *Institutions*) and therefore knowledge and truth should come from our lips : Worthy, and ingenious men will remember, and reflect upon that passage of that good and wise man *Seneca*, *Non qua itur, sed qua cundum* ; follow not the rayes of the Lawyers of the House of Commons : God forgive them, I am sure the King will, if they be wise and seek it in time.

A.D. 7.

The Gent. sayes, *We sweare that the King is our supreme Governour over all persons and in all causes, &c.* Why hath he left out the word (*only*) ? for the oath the Members now take, is, that King *Charles* is now the only and supreme Governour in all causes, over all persons, and yet they keep their only Supreme Governour now in prison, and act now in Parliament by vertue of their Prisoners Writ, and by a concurrent power in this Parliament, and by their own strict right and property, (as the Gent. affirms in his Answer) These things agree well with their Oath, that the King is the only Supreme Governour in all causes, over all persons ; this Oath is taken now in the Parliament time, by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments, otherwise they have no power, nor colour to meddle with the publike Affaires.

5 Eliz. cap. 1.  
Cawdieys case  
5 pars. fol. 1.

This Oath is  
allowed by the  
Common Law  
of the Land

This Oath being taken in Parliament, that *the King is the only and Supreme Governour in all Causes*, then it follows in Parliament causes ; *over all persons*, then over the two Houses ; let them keep this Oath ; and we shall be sure of peace in the Land : and good Lawyers ought to desire peace, both for the publike good and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *We doe not sweare that the King is above all Law nor above the safety of his people* ; neither doe we so sweare, but His Majetty and we will sweare to the contrary, and have sworn,



sworn, and have made good, and will by Gods grace make good our Oath to the world, that the King is not above the Law, nor above the safety of his people; the Law and the safety of his people are his safety, his Honour and his Strength.

A. D. 8.

The Gent. concludes, *That Acts of Parliament are not formally binding, nor complete without the Kings assent, yet the Houses have a virtuell power without the Kings particular assent, to doe things in order to publike Justice and Safety, (viz.)* In setting up the Excise, in raising and maintaining of Armies, in taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loanes, Compositions, imprisoning the King, abolishing the Common-prayer-Book, selling the Churches Lands &c. all these are in order to the publike Justice and Safety.

Mr H. P. you are of my profession, I beseech you, for the good of your Countrey, for the Honour of our Science, perswade your selfe and others, as much as in you lies, to believe and follow the monition and Councell of that memorable, reverend, and profoundly learned in the Lawes and Customes of the Land, the Lord Coke, who writes as becomes a great and a learned Judge of the Law (a person much magnified by the two Houses) in these words? *Pernse over all Booke, Records and Histories, and you shall finde a Principle in Law, a Rule in Reason, and a Tryall in Experience, that Treason doth ever produce a fuall and finall destruction to the offender, and never attaines to the desired end (two incidents inseparable therunto) and therefore let all men abandon it, as the poisonous baite of the Devill, and follow the Precept in holy Scripture, SERVE GOD, HONOUR THE KING, AND HAVE NO COMPANY WITH THE SEDITIOUS.* 22. IV 68

3 Pars, Instit.  
P. 36.

#### CONCLUSION.

**I** Say againe, that without an Act of Oblivion, a gracious generall Pardon from His Majesty, the Arreares of the Soulaier's paid, a favorable regard had to tender Consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing he hath:

By me David Jenkins Prisoner in the Tower.

The End.

A  
DISCOURSE

Touching the Inconveniencies of a  
Long continued Parliament.

*Kew. H. No 1*  
AND THE  
JUDGEMENT  
OF THE  
LAW OF THE LAND  
In that Behalfe.

By DAVID JENKINS now Prisoner in  
the Tower of LONDON.

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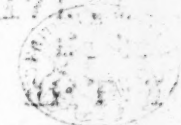
Printed in the Yeare, 1647.

# DISCOUNT

FOR THE YEAR 1877

## AND THE PAYMENT

OF THE LAND



OF THE LAND



1877



# A DISCOURSE

Touching the Inconveniencies of a  
Long continued Parliament.

1.

**A** perpetuall Parliament is repugnant to the Act made this Parliament for a Triennial Parliament; for how can every three years a Parliament begin, if this be perpetuall, which may be so if the two Houses please?

2.

An adjournment of the Parliament makes no Session, *4 Pars. Institut. fol. 27.* Howbeit, before the Adjournment, the King gives His Royall assent to some Bills. *Cooke, ibid.*

3.

There is no Session till a prorogation or dissolution of the Parliament.

4.

This Parliament, as appears by the Act for not dissolving thereof, set downe in the Printed Statutes of this Parliament, *fol. 138.* cannot be prorogued but by Act of Parliament. There hath beene as yet no Act of Parliament present, and therefore all the Acts of this Parliament, are Acts of one Session.

Plowd. com. 79  
35 H. 8. Bro.  
relation 35.  
Bro. Parl. 86.  
Dier. 1 Matiz  
45.

5.  
All the Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day: So the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the Law.

6.  
4 Ed. 3. cap. and 36 Ed. 3. cap. 10. A Parliament is to bee holden once every yeere, and more often if need shall bee: those Acts are confirmed by the Act for the Trienniall Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeere, or with the intencion of those Lawes? How doth a Parliament every three yeeres agree with a Parliament for ever, which may be, if the two Houses please?

7.  
The result is this; at one day in Law this Parliament two Acts have passed (for howbeit the one was in 16 Carol. and the other in 17. Carol. yet both in Law are Acts of one day) the one saith there shall be a Trienniall Parliament after the end of the sitting of this Parliament: The other, this Parliament shall sit for ever, if they please. The one will have a Parliament with an end, the other, a Parliament without an end.

8 Pars, Doct.  
Bonhams case  
fol. 118.  
8 Ed. 3. 10.  
33 E. 3. cessavit, 22.  
27. H. 6. Annuity 41.  
14 Eliz. Dier, 313.

When an Act of Parliament is against common right or Reason, or repugnant, or impossible to bee performed, the Common Law shall controule it, and adjudge this Act to bee void; they are the words of the Law.

An Act of Parliament, that a man shall bee Judge in his owne cause, is a void Act.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his

his person, that such persons during their lives should not be questioned by a privilege of Parliament, and that extended also to many others besides themselves. Common Right doth abhorre these enormities, which a perpetuall Parliament doth beget, besides the utter destruction of all mens actions, reall, personall, or mixt, who have to doe with Parliament men, by the Statute of Limitation, which confines suits to certain yeares. 21 Jac.

For Common Reason. Parliaments were ordained for remedies to redresse publike grievances; It is against Reason they should make publike and insufferable grievances. The Law of the Land allowes no protection for any man imployed in the service of the Kingdome but for a yeare, to be free from suits, and in many suits none at all, howbeit hee be in such service; but a Parliament perpetuall may prove a protection, not for a yeare, but for ever, which is against all manner of Reason. 39 H. 6. 39.

For Impossibility. The death of His Majesty (whose life God prolong) dissolves it necessarily; For the Writ of summons is, *Carolus Rex in hoc individuo*, and *Carolus Rex* is in this particular, *Habiturus colloquium & tractatum cum Prelatis & proceribus, &c.* King Charles being to have Conference and Treaty with his Prelates and Peeres; *Carolus Rex* cannot have *Colloquium & tractatum*, Conference and Treaty, when he is deceased; and therefore it is impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive. 2 H. 5. Cooke  
Title Parliam  
3. pars.

For Repugnancie. That which is but for a time, cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act of 17. *Caroli Regis*, which is to continue at pleasure, is in the said Act expressed to be to raise credit for money for these three purposes. First, for reliefe of his Majesties Army and people in the North.

Secondiy,



Secondly, for preventing the imminent danger of the Kingdome. Thirdly, for supply of other His Majesties present and urgent occasions. These ends are ended, the reliefe of that Army, the imminent danger supposed was sixe yeares agoe, the supply of His Majestie hath beene a supply against him, take away the end, the meanes thereto are to no purpose, take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable and uselesse.

Sir Anthony  
Mayns case. 5.  
pars. 1 H. 4. 6.  
Littl. cap.  
Villen.

A perpetuall Parliament (besides that it incites men to selfe-ends, destructive of the publique of which the whole Kingdome hath had sufficient experience) wilbe a constant charge to the Kingdome; for that every County and Borough, who send Members to the Parliament, are by the Law to pay wages to their Parliament men, which to many Counties will amount above some Subsidies Yearely: There are many poore Borough-Townes in each County of this Kingdome, who being to maintaine two Burgesses in Parliament, will be quickly begger'd, if the Parliament have no end; for all which reasons it is cleare, that such long continuance of Parliaments, will instead of a remedy (which is and ought to be the proper and true end of Parliaments) become an insufferable grievance and oppression to all the People of the Land.

The Writ of Summons this Parliament is the basis and foundation of the Parliament. If the Foundation be destroyed the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium et tractatum cum praelatis, magnatibus et proceribus super arduis negotijs concernentibus*; 1. Nos. 2. *Defensionem regni nostri* 3. *Defensionem Ecclesie Anglicane*. This Parliament hath overthrowne this Foundation in all 3 parts, 1. Nos. the King, they have chased him away, and imprisoned

prisoned him; they have voted no prelates, and a number of other Lords, about 40. in the City must not come to the House, and about 40. more are out of Towne, the *colloquium et tractatus* are made void thereby. For the King cannot consult and treat there with men removed from thence. 2. *Defensionem regni nostri*, that is gone; they have made it their Kingdome, not His, for they have usurped all His Sovereignty. 3. *Defensionem Ecclesie Anglicane*, that is gone, that *Ecclesia Anglicana* must be understood necessarily that Church, that at the test of the Writ was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed, and made nothing of the Writ whereby they were Summoned and Assembled. If the Writ be made void, all the process is void also: that House must needs fall, where the Foundation is overthrowne, *Sublato fundamento opus cadit*, the Foundation being taken away, the worke falls, is both a maxime in Law and Reason.

For some yeares past, there is no crime from Treason to Trespasse, but they are guilty of: all Treason, Felonies, Robberies, trespasses are *contra pacem, coronam, et dignitatem Regis*, against the Peace, Crowne and Dignitie of the King; as appears by all Indictments in all Ages. *Pax Regis* the Kings Peace, *Corona Regis*, the Kings Crowne, *Dignitas Regis*, the Kings Dignitie, are all trod under foot, and made nothing; *Pax Regis*, the Peace of the King is become a Warre against the King, His Dignitie put into prison, and the Crowne put upon their owne heads.

All the Judges of England have resolved, that Noble men committing Treason have forfeited their Office and Dignitie, their Offices to counsell the King in time of Peace, to defend him in time of Warre, and therefore those men against the duty and end of their Dignitie taking not onely Counsell, but Armes also to destroy

Him

Nevills case  
7. part, 34.  
2. Jacobi.

Him, and being thereof attaint by due course of Law by a raight condition annexed to the estate of their Dignitie, have forfeited the same; they are the words of the Law, and therefore they have made themselves incapable to be Members of the upper House.

*The Oppressions of the People.*

Briberies, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords, what have they done?

The House of Commons cannot by the Law commit any man to prison, who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique Peace, by the priviledge of the whole body.

They have no power by the Writ, which the King issueth to elect and returne Members of that House, so to doe. For the Writ for them is onely *ad faciendum et consentiendum* to those things, whereof His Majestie shall consult and treat with his Prelates and Nobles, *et de communi consilio Regni* shall be there ordained, as appeares by the Writ. Here is no separate power given over the Kings people to them, but onely *ad faciendum et consentiendum*, and in all times this hath beene expounded and restrained to that which concerned their owne Members in Relation to the publique Service, as he is a Member of the corporate body of the Parliament, whereof the King is the Head.

4 Pars. institut. 23. 24. 25.

But that the House of Commons have committed any man for Treason, Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and Reason, so no instance can be given till this Parliament.

19 H. 6. 43.  
22. E. 4. 22.  
5 H. 4. cap. 8.  
3 H. 6. 46.

All Questions and trials where witnesse are examined, the examination is upon oath by the Law, by all our Bookes,

Bookes, Statutes, every dayes practice. Examination without an Oath, is but a loose discourse; therefore the House of Commons not claiming power to give an Oath, have no power to examine any man.

No man shall bee imprisoned by the King or His Councell, unlessse it be by Inditement, presentment of his good and lawfull Neighbours where such deeds bee done, in due manner, or by proceffe made by Writ originall at the Common Law: This Statute rehearles *Magna Charta*, pag. 29. and expounds *Lex terre*, the Law of the Land there mentioned: This Law binds all men, and the House of Commons (for they say they are of the Kings Councell) in all points, but onely against the disturbers of the service of the Parliament; and therefore the imprisonment of severall persons who are not their Members, and for no disturbance to their Members, is utterly against the Law of the Land, and the franchise of the Free-men of this Realme.

27 E. 3. c. 12.  
Petition of  
Right, 3 Car.

*Cui non licet quod minus, non licet quod majus*; he who may not doe what is lesse, may not doe what is greater; they cannot commit a man for murder or Felony, much lesse for Treason.

No Court can fine and imprison, but a Court of Record, the House of Commons is no Court of Record, the House of the Lords where the King is in his Person, his Nobles and his Judges, and Councell at Law, the Masters of the Chancery assitting, is a Court of Record, and that is the Court of Parliament, where the *colloquium & tractatus* is. The House of Commons may present grievances, grant or not grant aydes, consent or not consent to new lawes, but for fining and imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no Journall Booke, but sithence *Edw. 6.* time. 6 *Hen. 8. cap. 15.* doth not prove the House of Commons to be a Court of Record, it mentions onely to be entered on Record in the Booke of the Clerke of the Parliament, if any Member depart into the Country.

8 Pars, Cook  
120.  
27 H. 6. 3.

There is no Journall there but sithence *Ed 6.* time, or it is a remembrance or memoriall, as *12 H. 4. 23.*

*14 H. 8. 3.*  
*36 H. 8. Dier*  
*60.*  
*4 Pars Instit.*  
*cap. 1.*

The whole Parliament is one corporate body, consisting of the Head and three Estates: The Court is only there where the *Consilium & tractatus* is, where the consult and treaty is with the King, which is in the House of Lords onely.

The House of Commons claime not to examine upon oath any man; no Court can bee without a power to give an oath, Courts Baron, Court of Pipowders, Country-Court, may and doe give oath: No Court can bee without a power to try, no tryall can be without Oath; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to tryall, and consequently can be no Court.

The behaviour of the Commons at a Conference with the Lords, the Commons are alwayes uncovered, and standing when the Lords sit with their hats on, which shewes they are not Colleagues in judgement, for fellow Judges owe no such Reverence to their Companions.

When was ever Fine imposed by the House of Commons extreated in the Exchequer? The ejecting of a Member, who hath sitten, is against the Law; for they cannot remove a man out of the House unduly returned, much lesse a man returned duely.

By these Lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is 100. pound, one to the King, another to the party that is duly elected, imprisonment for a yeare without Baile or Mainprise; and that person who is unduly returned, shall serve at his owne charge, and have no benefit at the end of the Parliament by the *Writ De solutione fœndorum Militum, Civium & Burgensium Parliament.* and the tryall of the falsity of the returne, is to be before the Justices of Assises in the proper County,

*2 H. 4. cap. 1.*  
*1 H. 5. cap. 1.*  
*3 H. 6. cap. 7.*  
*23 H. 6. cap. 15*

County, or by action of debt in any Court of Record. This condemnes the Committee for undue elections, which hath been practised but of late times; for besides these Lawes, it is against a maxime of the Common law; Ed. 4. 20. Ed. 4. 41. an averment is not receivable against the returne of the Sheriffe, for his returne is upon Oath, which Oath is to be credited in that suit wherein the returne is made.

The said Statutes condemne and make those members no members, which were not resiant in the County or Boroughs, for which they were elected, at the time of the rest of the Writ of the Summons of the Parliament, and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

*Assault upon Parliament Men.*

If a Parliament man or his Meniall Servant be assaulted, beaten, or wounded, in the Parliament time, proclamation shall bee made where the deed is done, that the offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, and the offence there to be tryed, for default of appearance the offender is declared, attainted of the misdeed, and it is accorded that thereafter it bee done likewise in the like Case. 5 H. 4. cap 6. 11 H. 6. cap 11.

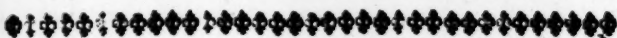
Serving of processe upon a Lord of the Parliament punished in the Lords House. Bogo de Clare 18 E. 3. 4 pars, Instit. fol. 24.

Serving of processe upon Thornsby inquired of in the Chaucery, and there the offenders were convicted. Iohn Thornsbyes case, Clerk of the Parliam, ibid. 10. E. 3.

The premisses prove, that breaches of priviledge of Parliament may bee punished elsewhere then in Parliament.

Upon all this Discourse, it is easie to discern what fruits may be expected from this Parliament, continuing as long as the two Houses please; and that there is no safety for this Common-wealth, but by the Observations of their ancient Franchises, Customes and Lawes.





## CONCLUSION.

**I** Say againe, that without an *Act*  
*of Oblivion, a gracious generall*  
*Pardon from His Majesty, the Ar-*  
*reares of the Souldiers paid, a favo-*  
*rable regard had to tender Conscien-*  
*ces, there will bee neither Truth nor*  
*Peace in this Land, nor any man se-*  
*cure of any thing he hath.*

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The End.

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AN  
APOLOGY  
FOR THE *R with No 1*  
ARMY,

Touching the eight Quæres upon the late  
Declarations and Letters from the  
Army, touching sedition falsely  
charged upon them.

Wherein those Quæres are resolved, and thereby  
the present proceedings of the Army are  
proved to be Legall, Just & Honorable.

By DAVID JENKINS, Prisoner in the  
Tower of LONDON.

*Quis tulcrit Gracchos de seditione querentes.*

Printed in the Yeare, 1647.

AN  
APOLOGY  
FOR THE  
ARMY

That the Army is upon the late  
proceedings and matters from the  
Army, concerning the late  
proceedings and matters from the

Wherein the charges are resolved, and thereby  
the present proceedings of the Army are  
proved to be just and reasonable.

By DAVID JENKINS, Printer in the  
Tower of London.

Printed and sold by the Author at the

Printed in the Year 1647.

AN  
**APOLOGIE**  
 FOR THE  
**ARMY.**

**H**ere Treasonable and insolent *Quarier* make the Army the Houses Subjects, and not the Kings. None by the Lawes of this Land can in this Kingdome have any Army but His Majesty.

It appeares, the Army doth now evidently perceive, that they were mis-led by the specious pretences of *Salus Populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and liberties of the Subject, to take up Armes against their naturall Liege Lord and Sovereign; the King. The People is the Body, the King is their Head; was the Body safe when the Head was distressed and imprisoned? For Lawes and Liberties have not the prevailing partie in the two Houses destroyed above 100 Acts of Parliament, and in effect, *Magna Charta*, & *Charta de Foresta*, which are the common Lawes of the Land. Doth Excize, Fifth, and Twentieth Parts, Meale-

*Braddon fol.*  
 118,  
*Stanford f.*

*Mag. Char.*  
 c. 1. & ultim.  
 All the act  
 concerning  
 the King,  
 Church, and  
 Churchmen.  
 25. E. 1. c. 1.

money, and many more burdens which this Land never heard of before maintaine the Liberties of the people: You, and that partie of the two Houses, made the Army by severall Declarations before engagement, believe that you would preserve the Kings Honour and Greatness, the Lawes and Liberties of the people: The Army and the whole Kingdome now *facta* *vident*, see your actions, and have no reason longer to believe your Oathes, Vowes, and Declarations; and since that partie in the two Houses refuse to performe any thing according to their said Oathes, Vowes, and Declarations, The Army and the Kingdome may and ought, both by your own principles and the Lawes of the Land, pursue the end for which they were rayled. And for your first *Quære* is resolved, whereby it is manifest, that specious pretences to carry on ambitious and pernicious designs, fix not upon the Army, but upon you, and the prevailing partie in both Houses.

• The Solution of the second *Quære*.

The Army, to their eternall honour, have freed the King from imprisonment at *Holmby*. It was High Treason to imprison His Majestie: To free His Majestie from that imprisonment, was to deliver Him out of Traiterous hands, which was the Armys bounden dutie by the Law of God and the Land. That partie refused to suffer His Majestie to have two of His Chaplaines for the exercise of His Conscience who had not taken the Covenant; free access was not permitted, doth the Army use His Majestie so that men see that access to Him is free; and such Chaplaines as His Majestie desired, are now attending on His Grace: Who are the guiltie persons, the Army, who in this action of delivering the King act according to Law, or the said partie who acted Treasonably against the Law? Who doth observe the Protestation better, they who imprison their King, or they who free Him from prison?

That

That this Army was rayſed by the Parliament is utterly falſe: The Army was rayſed by the two Houſes upon the ſpecious pretences of the Kings Honour, common ſafety, and the preſervation of Lawes and Liberties, which how made good hath bene ſhewed before, and all the people of the Kingdome doe find by woſull experience.

The two Houſes are no more a Parliament then a Body 14. H. 3. without a Head a man. The two Houſes can make no Court without the King, they are no Body Corporate without the King, they all, Head and Membets, make one Corporate Body; and this is ſo cleare a truth, that in this Parliament, by the Act of 17. *Caroli*, it is declared, That the Parliament ſhall not be diſſolved or prorogued but by act of Parliament; but the two Houſes may reſpectively adjourne themſelves, two Houſes & a Parliament are ſeverall things. The act for *Conſtituta ſidem vero faciunt*, all circumſtances agree to prove this truth. Before the *Norman* Conqueſt, and ſithence to this ance of this day, the King is holden Principall, *Caput, & finis*, that is, the Parliament. Beginning, Head, and chief end of the Parliament, as appeareth by the Treatiſe of the manner of holding of Parliaments made before the *Norman* Conqueſt; by the Writ of Summons of Parliament whereby the Treaty and Parler in Parliament is to be had with the King onely, by the Common Law, by the Statute-Law, by the Oath of Supremacy, taken at this and every Parliament, it doth manifeſtly appeare, that without the King there can be no colour of a Parliament.

How many Votes have they revoked in one Seſſion, yea, and Bills? Was there ever the like done? Nay, is not the conſtant courſe of Parliaments violated and made nothing thereby? They are guarded by Armed-men, divide the publique money among themſelves, and that partie endeavours to bring in a Forreigne to invade this Land againe: If they be no Parliament, as clearely they are none without His Majeſtie, they have no privileges, but doe exerciſe an Arbitrary, Tyrannicall, and Treasonable power over the people.



7.E.4.20.

8..E.4.3.

9.E.4.27.

4.H.7.18.

27.H.8.23.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offender, to apprehend him, and to secure him so, that Justice may be done upon him according to the Law.

You say, The disobedience of the Army is a sad publique president, like to conjure up a spirit of universall disobedience, I pray object not that conjuring up to the Army, whereof you, & the prevailing partie in the Houses are guiltie; who conjured up the spirit of universall disobedience against His Majestie, your and our onely Supreme Governour, But you, and that partie in the two Houses, and even then, when the house of Commons were taking, and did take the said Oath of Supremacy? For the Covenant you mention, it is an Oath against the Lawes of the Land, against the Petition of Right, devised in *Scotland*, wherein the first Article is to maintaine the Reformed Religion in the Church of *Scotland*: And certainly there is no Subject of the English Nation doth know what the Scottish Religion is. I believe the Army tooke not the Covenant: No man by the Law can give an Oath in a new case without an Act of Parliament; and therefore the imposers thereof are very blamable and guiltie of the highest Crime.

2.pars. Coll.  
of Ord. pag.  
803.  
Petition of  
right 3. Car.  
2.pars. instit.  
719.

The Writer of these *Queries* seemes to professe the Lawes, let him declare what Act of Parliament doth justifie the tendering, giving, or taking of the said Oath: he knoweth there is none, he knoweth that all the parts of it are destructive of the Lawes and Government to maintaine which the Law of nature & the Law of the Land had obliged them: The Oath of the Covenant makes the Houses Supreme Governours in causes Ecclesiasticall, the Oath of Supremacy makes the King so, and yet both taken by the same persons, at the same time. What credit is to be given to persons who make nothing of Oathes, and contradict themselves? How doe the Covenant and the Oath of Supremacy agree? How doth their Protestation and the Co-

Mag. Chart.  
cap. 1. & Ul-  
timo Arti-  
culi cleri,  
and many o-  
ther statutes.  
16.Ed.4.10.

venant agree? How doe their Declarations and Oathes agree? The Lord be mercifull to this Land for these Oaths.

It is a sad thing to consider that so many gentlemen who professe the lawes, and so many worthy men in both Houses should be so transported as they are, knowing that the Lawes of the Land from time to time, and in all times, are contrary to all their actions, and that yet they should amuse themselves and the people with the word of Parliament, without the King, and with the Covenant; whereas they know they are no Parliament without His Majestie, and that English men throughout the Kingdome should sweare a Covenant, to preserve the reformed Religion of *Scotland*, in Doctrine, Worship, Discipline and Government, which they no more know than the Doctrine, Worship, Discipline and Government of *Prester John in Ethiopia*: if they consider it, they cannot but discern that this is a high desperate and impious madness.

Be wise in time, without the King and the Lawes you will never have one houre of safety for your Persons, Wives, Children or Estates: Be good to your selves, and to your Posterities; apply your selves to be capable of an Act of Oblivion, and of a generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable liberty for mens consciences, and God will blesse your endeavours, and the people (to whom you are now very hatefull) will have you in better estimation.

*The third Question is thus answered.*

You ascribe the Army to *Jacke Cade* and his Complices, and you cite the Act of Parliament of 31. *Hen. 6. cap. 1.* and that it may appeare who acts the Part of *Jacke Cade*, you and that Party in the two Houses, or the Army, I thinke it necessary to set downe the said Act in words at large as followeth.

First, Whereas the most abominable Tyrant, horrible, odi-

*ous and arrant false Traytor Iohn Cade, calling and naming himself sometime Mortimer, sometime Cap. of Kent, which name, fame, acts, and feats are to be removed out of the speech and mind of, every faithfull Christian man perpetually, falsely and traiterously purposing, and imagining the perpetuall destruction of the Kings said Person, and finall subversion of this Realme, taking upon him Royall power, and gathering to him the Kings people in great numbers, by false, subtle, imagined, Language, and seditiously making a stirring Rebellion, and Insurrection, under colour of justice, for reformation of the Lawes of the said King, robbing, stealing, and spoiling great part of his faithfull people. Our said Sovereigne Lord the King considering the premises, with many other which were more odious to remember, by advise and consent of the Lords aforesaid, and at the request of the said Commons, and by authority aforesaid, hath ordained and established that the said Iohn Cade shall be reputed, had, named, and declared, a false, Traytour to our Sovereigne Lord the King; and that all his tyranny, acts, feats, and false opinions shall be voyded, abated, annulled, destroyed, & put out of remembrance for ever: and that all enditements and all things depending thereof, had and made under the power of tyranny shall be likewise void, annulled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted, but by the authority of the said Parliament cleerely declared for ever: and that all enditements in times comming in like case under power of tyranny, rebellion and stirring had, shall be of no Record nor effect, but void in Law; and all the Petitions delivered to the said King in his last Parliament, holden at Westminster, Novemb. 6. in the 29. of his Reigne against his mind by him not agreed, shall be taken and put in oblivion out of remembrance, undone, voyded, annulled and destroyed for ever, as a thing purposed against God and conscience, and against His Royall Estate and preeminence, and also dishonourable and unreasonable.*

Now

Now wee are to examine who hath trod in the steps of Jack Cade, you and the present prevailing party of the two Houses tooke upon them, and doe take all the Royall Power in all things; so did Jack Cade, as appeares by the said Act; the Army doe not so: They who imprison the King purpose to destroy His Person (our imprisoned Kings alwayes \* Jared to.) Jack Cade did likewise so purpose, but the Army doe not so: The said party in the two Houses made a stirring under colour of Justice for Reformation of the Lawes; so did Jack Cade: The Army doe not so, but desire that the Lawes should be observed: Jack Cade levied Warre against the King, the Army preserves Him: Jack Cade dyed a Declared Traytor to his Sovereigne Lord the King; this Army lives to have the glorious true Honour of being restorers of their King.

Simon Sudbury Archbishop of Canterbury was murdered by Jack Cade: William Land Archbishop of Canterbury was likewise murdered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, & his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many misled by Jack Cade, perceiving his Trayterous purposes, fell from him; and as that was lawfull, just, and Honourable, so it is for this Army to adhere to their naturall King, and to indeavour to settle the Kingdome againe in the just Lawes and Liberties thereof: London did then right worthily adhere to the King and the Lawes, and not to Jack Cade and his specious pretences, and it is hoped they will now so doe: By this it appeares, that the Gentlemans Discourse touching Jack Cade, fastens altogether on his party, and cleareth the Army.

#### To the IV. which is solved thus.

The Arreares of the Army (howbeit it is the least thing they looke after) yet being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party

C. M. 1111

1111 1111

1111 1111

\* Edward 2.

Henry 6.

Richard 2.

25 Ed. 3. 4.

28 Ed. 3. 3.

Petition of

Right, 3 Car.

Ritz. N. B.

15.

9 Ed. 4. 20.

38 H. 6. 27.

23 Eliz. Dier

369.

in the Houses: A person who serves in any kinde, and is not paid his wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reforme all things when the Army doth disband; who will beleve it? Will any beleve that the settling of the Presbytery will doe it? Will any beleve that his Majesty will passe the Propositions sent to Him to *Newcastle*? Will any man beleve that this Kingdome will ever bee quiet, without His Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing, without a Pardon from His Majesty? Have they not seene some of their Fellows hanged before their eyes, for actions done as Souldiers? Shall the Kingdome have no account of the many Millions received of the Publike Money? Will the Members of the Houses accuse themselves? Shall private and publike Debts bee never paid? Shall the Kingdome lye ever under burthens of Oppression and Tyranny? There is no visibible way to remedy all these enormities, but the power of the Army.

*To the V. which is solved thus.*

The Kingdome hath better assurance of Reformation from the Army, then from the Houses, for that in their Military way they have bin just, faithfull & honorable, they have kept their words: That party of the Houses have bin constant to nothing but in dividing the publike Treasure among themselves, and in laying burdens upon the people, and in breaking all the Oathes, Vowes, and Promises they ever made: As the Army hath power, so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armes are just, and blessed; and the King is bound in Justice to reward his Deliverers with Honour, Profit, and meet Liberty of Conscience.

2 &amp; 3 Ed. 6.

cap. 2.

21 H. 7. cap. 11.

Calvins case,

7. pars. Cook

fol. 11.

## To the VI. Quare.

All the sixth *Quare* contains Calumnies cast upon the Armie; the new elections are against all the Lawes mentioned in the Margin, and are against the ejection of the old Members: and by this it may be judged, what a House of Commons we have. By the said Lawes it appears, that if any undue returne be made, the person returned is to continue a Member; the Sherifes punishment is two hundred pounds, one to the King, and the other to the partie that is duly elected; imprisonment for a yeare, without Bayle or Mainprise: and that person who is unduly returned, shall serve at his owne charge, and have no benefit at the end of the Parliament, by the Writ *de solutione feodorum Militum, Civium & Burghensium Parliament.* And the tryall of the falsitie of the returne, is to be before the Justices of Assises in the proper Countie, or by Action of Debt in any Court of Record. This condemnes the Committee for undue elections, which hath been practised but of late times: for besides these Lawes, it is a Maxime of the Common Law, an Averment is not receivable against the returne of the Sherife, for his returne is upon Oath which Oath is to be credited in that suit wherein the returne is made.

11 H.4.c.1.  
1 H.5.c.1.  
8 H.6.c.7.  
23 H.6.c.15.

3 Ed.4.20.  
5 Ed.4.42.

The said Statutes condemne elections of such men which were not resiant and dwelt in the Countie or Boroughs for which they were returned; and any abusive practise of late times to the contrary, is against the Law, and ought not to be allowed.

## To the VII. Quare.

The *Querist* saith, That the Votes of the Independents in the Houses were arbitrarie, exorbitant, and irregular, and that they disposed and fingered more of the common Treasure then others: That whole *Quare*, I believe, is false and stande-



37 E. 3. c. 17. slanderous; and the Author ought to make it good, or else to undergoe the Law of *Talion*; which is, to suffer such punishment, failing of his prooffe, as the accused should, in case of prooffe made.

*To the VIII. Quere.*

This *Quere* is all miratorie and threatening, and the contrarie of every part is true: by the deliverance of the King and Kingdome from the bondage of that partie in the two Houses by the Army, their renowne will be everlasting; they secure themselves, they content and please the Kingdome, Citie, and Countrey, as appeares by their confluence to see his Majestie and the Armie, and their acclamations for his Majesties safetie and restitution: all which doth evidence to every one of the Armie, how acceptable the intentions of the Armie are to the people of this Land, who have been so long intrahled.

Sir *Thomas Fairfax*, let your Worthinesse remember your extraction and your Ladies, by the grace and favour of the Prince, to be in the ranke of Nobilitie; remember what honour and glory the present Age and all posteritie will justly give to the restorer of the King to his Throne, of the Lawes to their strength, and of the afflicted people of this Land to peace: let the Colonels and Commanders under you, and likewise your Souldierie, rest assured, that they shall not only share in the renowne of this action, but also shall have such remuneration as their hantie courage and so high a vertue doth deserve: This his Majestie can and will doe, the Houses neither will nor can; and God blesse you all, and prosper you.

*I conclude all, as I have alwayes done: Withour an Act of Oblivion, a generall Pardon, the Arreares of the Souldierie payd, and a regard to Libertie of Conscience, this Kingdome will certainly be ruined.*

FINIS.

